S. HRG. 100-131, Pt. 2

# TAXPAYERS' BILL OF RIGHTS

## HEARING

BEFORE THE

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

## COMMITTEE ON FINANCE
## UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

**S. 579 and S. 604**

JUNE 22, 1987

**Part 2 of 2**

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# TAXPAYERS' BILL OF RIGHTS

MONDAY, JUNE 22, 1987

U.S. SENATE, SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE OF THE COMMITTEE ON FINANCE,

*Washington, DC.*

The committee was convened, pursuant to notice, at 9:37 a.m., in room SD-215, Dirksen Senate Office Building, the Honorable David Pryor (chairman of the subcommittee) presiding.

Present: Senators Pryor, Heinz, and Wallop.

Also present: Senators Reid and Grassley.

[The press release announcing the hearing and the prepared written statements of Senators Heinz and Wallop follow:]

[Press Release No. H-51]

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE TO HOLD THIRD HEARING ON TAXPAYERS' BILL OF RIGHTS

WASHINGTON, D.C.—Senator David Pryor (D., Arkansas), Chairman of the Finance Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service, announced today that the Subcommittee will hold its third hearing on a proposed Taxpayers' Bill of Rights.

The hearing is scheduled for Monday, June 22, 1987 at 9:30 a.m. in Room SD-215 of the Dirksen Senate Office Building. Earlier hearings were held on the proposed Taxpayers' Bill of Rights on Friday, April 10, and Tuesday, April 21, 1987.

Senator Pryor stated that the Subcommittee will, in this hearing, focus on the mechanics of collection, particularly on seizures and levies.

"I would like to present several cases that border on abuse and overreaching by the Internal Revenue Service and hear from the taxpayers involved. The Subcommittee needs to review the present system of collection and decide if any changes need to be made to avoid future abuses," Pryor said.

The Senator further stated that testimony at this hearing would be received from invited witnesses only. A list of those witnesses will be announced at a later date.

STATEMENT OF SENATOR JOHN HEINZ

Mr. Chairman, I congratulate you on this third hearing on the Taxpayers' Bill of Rights. Each hearing gives us a chance to further study the IRS procedures, and work with Commissioner Gibbs to improve one of the most powerful branches of this Government.

We all firmly believe in safeguarding taxpayers' rights. The real question is: How do we effectively safeguard these rights? Today, we will be hearing from a panel of Revenue Officers. This is the group of men and women who have had the duty to collect taxes over the years. They deal directly with the taxpayers, and know the problems that they have encountered, as well as the problems of the taxpayers. This distinguished panel knows how the system works, its faults, and its good points. Together, this panel has almost 100 years of experience. I want to thank each of you for being willing to come forward and testify.

During the last 3 years, I have held numerous hearings on the various problems within the IRS. While these hearings resulted in major improvements within the IRS, we must continue our efforts to improve the IRS, in order that it better serves the interests of the government and the taxpayers who support it.

STATEMENT OF SENATOR MALCOLM WALLOP

Mr. Chairman, thank you for holding a hearing on a subject that touches the lives of many Americans. At one time or another a taxpayer will have some contact with the Internal Revenue Service other than through the annual filing ritual. This contact could be nothing more than a notice of correction of a math error. It could also be the dreaded notice that his return has been selected for audit.

I have received many letters over the years from taxpayers, accountants, and lawyers concerning their dealings with the Internal Revenue Service. Many of the letters are concerned with their frustrations in dealing with a large impersonal agency. Their stories range from misplaced documents to forced settlements to seizure and sale of property. The bottom line is that there is a growing perception among many Americans that the IRS has risen above the law and is running amok over the rights of citizens.

At issue here today is the integrity of the tax system. This is being jeopardized, not by taxpayers as a whole, but rather by the Government in its treatment of taxpayers. The success of our system of taxation depends to a large degree on voluntary compliance with the law. A part of the concept of voluntary compliance is the perception that when a taxpayer has a dispute with the Government, the taxpayer will be treated in a fair and just manner and that the Government and its agents will abide by the law. The system is in jeopardy when taxpayers feel they will be intimidated, threatened, or coerced by Government agents.

I am convinced that the scales have tipped too far in favor of the Government. The time has come to rebalance these scales and to ensure that taxpayers are treated fairly and equitably by the IRS. Passage of the omnibus taxpayer's bill of rights, which I am pleased to cosponsor, will go a long way to correct this imbalance.

Senator PRYOR. Good morning, and welcome to the third meeting in this subcommittee on S. 604, The Taxpayers' Bill of Rights. I would like to thank the Senators who have joined me here today for this hearing, and I particularly want to thank Senators Reid and Grassley, who joined me in introducing this legislation and who have been most instrumental in its management ever since.

I also want to thank the distinguished chairman of the Senate Committee on Finance, Senator Lloyd Bentsen, for approving this third hearing and also for aiding in obtaining the presence of some of our witnesses this morning.

The first two hearings on The Taxpayers' Bill of Rights generated mountains of mail in my office and I am sure in the offices of Senators Reid and Grassley. In going through the thousands of letters and phone calls received by my office, I have noticed some very interesting patterns.

I first noticed in most of the cases of severe taxpayer abuse that the problems occurred during the collection process. Because of this striking pattern, I decided that the focus of this third hearing would be on collections and, in particular, seizures and levies and installment payment agreements. I also noticed that almost every single letter that I have received was from a small businessmen or a small taxpayer. Lee Iococca has not written me to complain about how the IRS had abused him or destroyed his life or had put his business into bankruptcy. I have not heard from the president of IBM. He did not write to me to tell he how his business or his personal life had been affected.

However, hundreds of small business people and small taxpayers—those most vulnerable—have written or called to relate sad stories similar to these. The little people of America are easy marks for the Internal Revenue Service, and I suspect that this is why they are frequent targets.

These people do not have batteries of accountants and tax attorneys waiting to do battle with the IRS. The 1986 Annual Report of

the United States Tax Court verifies this fact. I have included statistics relevent to this particular situation.

Today, we will hear from two small businessmen, one from the State of Arkansas and one from the State of Colorado whose, businesses were almost destroyed by the Internal Revenue Service. Many small business people have called or written to tell me that in cases involving small business, and especially in cases of delinquent employment taxes, that the IRS has an unwritten policy that the delinquency must be paid within ten days or the business will be shut down.

The IRS evidently will not attempt to work out a plan with the small business people so that the tax can be paid and the business can be saved. Through their testimony today, these two very courageous small business people will confirm what their colleagues have said.

In our first hearing, we heard testimony from Joseph Smith, a former IRS employee. He told us that promotions and pay raises in the Collection Division of the IRS were based on "statistics." If the Revenue Office does not make enough seizures and close enough cases, he cannot hope to be promoted.

Mr. Smith also told us that this emphasis on statistics turns revenue officers into production-oriented people, rather than people-oriented people. It is in this way that the bounty hunter mentality of the IRS is perpetuated.

In our second hearing, IRS Commissioner Lawrence Gibbs, a man that I greatly respect, told us that it was against the IRS' national policy for promotions to be based on statistics. He told us that the IRS does have problems, but they could best be dealt with internally in the IRS rather than through legislation.

The Commissioner also announced a new IRS policy of treating the taxpayer like a customer. I suspect that national policy directives never reach lower level management and that the individual offices operate in the same way that they have for years. We will talk about this this morning.

I think that Commissioner Gibbs is fighting an entrenched bureaucracy and that legislation is absolutely necessary to prevent taxpayer abuse and ensure taxpayer rights.

Commissioner Gibbs has admirable goals for the Internal Revenue Service. Simply put, The Taxpayers' Bill of Rights enacts those goals into law.

Today, we have requested the presence of five IRS Revenue Officers from across the country. These are not past officers; these are present officers who have voluntarily—and I must say very courageously—offered to come before this committee and tell us how the IRS operates in the area of collections, seizures, and levies. I look forward to the testimony of these agents on these subjects, and once again, I applaud them for their courage in coming forward.

These are very courageous people. I suspect that we will discover that promotions and pay raises are indeed based on statistics and, in particular, on seizures. I also suspect that we will discover that Revenue Officers have great difficulty in getting reasonable installment payment agreements approved by management. The Taxpayers' Bill of Rights is intended to put a stop to taxpayer abuse, and it seems obvious that management problems within the IRS are re-

sulting in such abuse. Through the questioning of these revenue officers we will be able to see the true nature of that system that we seek to change. I believe that we will learn from their answers and they will amplify the urgent need for The Taxpayers' Bill of Rights.

Once again, the taxes that we pay in this country are the price we pay for living in a free society. This hearing is not about taxpayers who want to cheat. It is not about taxpayers who want to pay less than their fair share. Rather, this hearing this morning is about the taxpayers of America who have a justified fear of the Internal Revenue Service.

It is also about Internal Revenue Service officers who fear the Internal Revenue Service themselves. It is about good and courageous employees of the Internal Revenue Service who are willing to come forward in public and tell us how the system really works.

Senator Grassley?

Senator GRASSLEY. Mr. Chairman, I want to thank you again for your leadership in holding these very important hearings. I think that when we are done with this series of hearings, this third meeting that we are having today will turn out to be the most fruitful of all that we have had.

And I think that we ought to highlight what you said, Mr. Chairman, about the courage and bravery of the IRS employees who are going to be before this committee today to present evidence, testimony, and to answer questions.

I think that it is very important that everybody in this country be aware of the fact that, when Federal employees sometimes come before a Congressional hearing, the public maybe doesn't appreciate the courage it takes to do that—not to come before us, but because of the retaliation and the opposition that can come from within the bureaucracy where those employees work. I think, Mr. Chairman, I ought to bring attention to the fact that in previous Congresses, I have held hearings—not so much before this subcommittee although I was chairman of this subcommittee at one time—but on another committee and in another area, listening to employees of the Defense Department come before my committee to express what they felt was wrong with the way the law was either not being carried out or with procedures that cost the taxpayers a great deal of money in the Department of Defense.

There is protection under Federal law for Federal employees who come before Congressional committees. Being asked to come before a committee and receiving testimony from civil servants is a very important source of information, very necessary for the legislative process of the Congress and the oversight function of the Congress as well.

So, testimony from people working in the trenches is a very important source of information but one which sometimes those employees tend to regret that they have come before Congress to give. And so, we have to remember that this is a constitutional function of the Congress; sources of information from civil servants is a very important aspect of Congress' constitutional power. And hence, the protection given to the civil servant so that they will not in any way be punished or reprimanded in the future is one that we, Mr. Chairman, are going to have to see is strictly adhered to by the ad-

ministrators of the departments from which these employees come. So, I think, Mr. Chairman, I need to remind you as I have had to remind myself in the past that not only do these people need to be commended for the courage with which they come before us, but it then puts upon each one of us individual responsibility to see that there is no retaliation whatsoever against these employees, that there is no punishment to them for coming before Congress to fulfill a constitutional responsibility of the Congress to legislate and oversee the administrative branch of Government.

I think that we would not be living in the real world, Mr. Chairman, if we didn't realize that that is a problem; and I am sure that these employees who are coming to testify also realize that. You have already spoken to their courage; the courage that it is going to take is after their testimony, not the coming before this committee.

Senator PRYOR. Senator Grassley, thank you. A member of this committee, Senator Wallop of Wyoming.

Senator WALLOP. Mr. Chairman, I have a statement which I would be pleased if you would insert in the record at this time.

Senator PRYOR. Without objection.

Senator WALLOP. Suffice it to say that I join with you and Senator Grassley and Senator Reid with the employees' willingness to make a case. And I think it is fair to say that a great many Senators don't need a case made to them; they have already had it made by hundreds and hundreds of letters and hundreds and hundreds of circumstances in which we have been asked to assist or have heard the dismay of the American public expressed about the means taken to intimidate, to force conclusions upon them which they bitterly resent but can't afford to contest. I don't know the number, but I would say the number is, in classical terms, legion of the people that I have been in contact with or who have been in contact with me from Wyoming.

But what I think is fundamentally important here is the view of the tax-paying public's integrity of the system of taxation. And absent that, absent a great willingness on the part of the American people to continue as they have in the past to be the most willing taxpayers in the history of the world, everything that we set about trying to do by way of tax reform or any other thing falls really apart; and we have a far greater problem than just the unfairness to one or two Americans. We have a system of collection of revenues that, having lost its integrity and the confidence of the people, loses its ability to collect, all at the same time.

It extends to the rest of the Government as well. If somebody feels that in pursuit of his revenue, the Government is willing to indulge in all sorts of extra-legal or intimidating tactics, he then becomes uncertain as to whether anything the Government spends its money on is worthwhile; and we can't afford that either. So, I compliment you and thank you and would ask that my statement be inserted in the record.

Senator PRYOR. Thank you, Senator Wallop. Senator Reid?

**STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Senator Pryor, thank you very much. I also appreciate you allowing me to sit as an ad hoc member of this committee during these hearings. This, as you have indicated, is the third in a series of hearings on the need for legislation to protect the rights of taxpayers from the Internal Revenue Service. Through these hearings and through the independent investigations carried out by our own individual offices, the members of this subcommittee have collected volumes of evidence that ordinary, middle income taxpayers and small business owners are often treated in a discourteous, abusive, and, I believe sometimes, illegal behavior at the hands of overzealous IRS Agents.

But, Mr. Chairman, I am not happy with this evidence for the simple reason that the bulk of the evidence is not new. We have new evidence in the form of new names, and that is about all that has changed. It is the same evidence gathered by Senator Montoya in the 1970s, as Senator Levin will indicate I am sure, it is the same evidence that was gathered by him in the early 1980s. It is the same evidence gathered by the Small Business Committee of the House in 1984.

And most discouraging of all, it is the same evidence gathered by Senator Grassley, an original cosponsor of this bill, in 1984 when he was chairman of this very subcommittee.

Congress has been made aware of these activities through many, many hours of testimony before various subcommittees in both Houses; yet, sadly, Mr. Chairman, little progress has been made to correct these abuses.

Finally it seems the attention of the public in general is focused, which certainly should be a help to us because, with the attention of the public focused on this issue I think that relief to the taxpayers of this nation is right around the corner.

The Omnibus Taxpayers' Bill of Rights, Senate Bill 604, enjoys the support of 28 Senators, five of whom sit on the Finance Committee. The companion measure in the House, H.R. 1313, has now over 70 cosponsors. This represents a historically high level of support for this type of legislation. Some might think of this level of

support as a stick. Mr. Chairman, I think that the stick—if in fact we want to call it that—could and should convince officials at the IRS that the abuses of taxpayers' rights, that have been highlighted in these hearings and those before, are real; that real solutions are needed if this nation's unique system of voluntary tax compliance is to be preserved.

I noted with interest the statement of Senator Wallop about voluntary compliance, and it is important to keep that in mind. If we are going to continue this system, the IRS has to respond to some of the problems that we have been able to point out through these hearings. But in spite of the word "stick," Mr. Chairman, I prefer not to use "stick" in my dealings in this instance; I prefer to use the "carrot."

And the "carrot" I hold out today is that of cooperation. As I believe we will learn from today's hearing, there are plenty of agents with the IRS who know better than any Senator or Congressman where the problems lie within the Service, why they exist at all, and how they might be corrected.

We are asking these agents and their employers down the street to take a close look at our legislation and help this subcommittee make it the strongest protection of individual rights in a piece of legislation that, upon final passage, will lead to an increase—yes, an increase—in actual revenues collected, yet protect the individual rights of taxpayers. I am quick to admit, Mr. Chairman, that The Taxpayers' Bill of Rights probably is not perfect. It needs improvement; but I am equally quick to observe that our system of collecting taxes needs improvement.

Just last Thursday, I received a phone call from a constituent of mine who is the director of a nonprofit organization in Las Vegas, Nevada, an organization that has done remarkably good things for the community and this country. She was in tears because the IRS had placed a lien, without notice, on her organization's bank account for failure to pay withholding taxes for one quarter. A simple phone call would have corrected any deficiency; she would have taken care of this.

Whatever explanation exists, though, for this abuse and others, I think that we have to understand that citizens simply do not expect, understand, or tolerate this type of action from an agency of the United States Government.

We acknowledge that most employees of the IRS—the vast, vast majority—in fact are hard-working, conscientious, and intelligent people doing the best they can to painlessly collect the taxes that citizens legally owe.

Today, I am challenging the Director of the Internal Revenue Service, Mr. Gibbs, whom we have all acknowledged is new, and he has convinced us that he wants to do what is right—I am challenging Commissioner Gibbs to cross the gauntlet that we have thrown down, to help members of this subcommittee produce legislation to protect the rights of taxpayers. I can safely guarantee this cooperation will improve the image of this important agency and lead to greater taxpayer compliance.

Mr. Chairman, I say the time has come when we need to drop this role that has been established of advocate versus adversary, and we need to work together to come up with some legislation. We

have proven that a problem exists, and I think it is important that Commissioner Gibbs meet with us, meet with our staffs, and try to come up with some legislation that we can whip through Congress without a lot of further problems. Thank you very much.

Senator PRYOR. Senator Reid, thank you. In 1979, Senator Carl Levin of Michigan was elected to the United States Senate. In 1980, only one year after his arrival in the Senate, Senator Levin held extensive hearings relative to the Internal Revenue Service and its relationship to the American taxpayer. Senator Levin is here with us this morning to share some thoughts on The Taxpayers' Bill of Rights.

I would like to say, that I have read the transcripts of Senator Levin's 1980 hearings. I applaud Senator Levin for his ability to see this issue not only as an issue but as a major problem, some six or seven years ago.

Senator Levin, we are proud to have you as our first witness this morning, and we look forward to your statement. Senator Carl Levin.

## STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Thank you, Mr. Chairman. First, let me congratulate you for your continuous strong struggle to get enacted into law a Taxpayers' Bill of Rights. It is long overdue. Senator Grassley has also been fighting this battle, as has Senator Wallop. Senator Reid brings over from the House the efforts that he has made there. And I know his joining with us now increases the chances that this Taxpayers' Bill of Rights will, at long last, be enacted into law.

Indeed, we did hold hearings in 1980. We heard extensive evidence of abuses by the IRS. We heard cases where, for instance, the IRS had entered into agreements for installment payments; the payments were being made on time, but the IRS went back on its agreement and seized the whole business anyway, even though the agreement was being lived up to by the taxpayer.

One of the problems which our bill—I am a cosponsor of S. 604—would address is indeed the situation where there is an agreement for installment payments. We would make that such agreements binding upon the IRS. And it seems to me common sense and common fairness that, when people enter into an agreement, if the taxpayer is living up to that agreement, then the IRS should also live up to that agreement.

We found evidence back in 1980 that IRS Agents were being pressured into making specific numbers of seizures or levies in order to make their records look good. They were given quotas. They were being judged in terms of their employment on how many seizures or levies they were making. These were artificial numbers that were being imposed on them; and rather than being told to go out there and do a good job of collecting taxes in the best way that is available—which frequently are just agreements—installment payment agreements, for instance—they were given artificial numbers of seizures and levies that they were supposed to make at that time.

So, there were abuses then. There was excessive, harsh enforcement action taken then, and those actions are obviously still being taken now. And those are the stories that you will hear this morning from some very courageous IRS Agents indeed.

Let me just give you some statistics. I think these are very important to give you the setting as to what has happened since 1980. From 1981 to 1986—in that five-year period—the number of delinquent tax accounts has gone up by about 35 percent. The number of seizures has gone up by 150 percent, and the number of levies has gone up by more than 100 percent.

Senator REID. Is that first figure 150 percent?

Senator LEVIN. 150 percent. Now, the exact numbers are in my statement, which I can provide for you now, or just leave those for the record. But the important thing, it seems to me, is the increased likelihood of abuse since 1980, when the last series of hearings was held—although Senator Grassley has held hearings since then, so perhaps we will have even more recent statistics.

But in any event, since the 1980 hearings, we have seen a 100 to 150 percent increase in the harshest measures which are used against taxpayers; but we have only seen a 35 percent increase in the number of delinquent tax accounts.

So, the potential for abuse just from those figures is clearly significant and extraordinary; and that is why it is so important that you are holding the hearings that you are holding, including today's hearing. Now, obviously, collecting taxes is desirable. We all want people to pay their fair share, but we also want taxes to be collected fairly. We don't want this Government to be acting like a foreign government towards our own taxpayers. This is our Government. It is supposed to be treating us decently.

And yet case after case comes to all of our offices where taxpayers are being treated indecently, where our small business people are being treated abusively.

The TEFRA law in 1982 made a few improvements. For instance, it required the IRS to release liens within 30 days after the tax liability had been paid. Now, think of that. We had to pass a law to require the IRS to release the lien within 30 days after they collected. You would think they would do that automatically within a week after they had collected the money; but the abuses were so great that we finally told them in law: You must do it within 30 days after you have your money.

No law should have been necessary for that; it is so obvious. We also required in TEFRA that there be notice prior to a levy on assets.

S. 604—I think I can say "our bill" because, Mr. Chairman, each one of us in this room has cosponsored your bill—makes important new reforms, critical reforms, reforms needed for a long time, including the written installment plans that I mentioned before. We make those binding on the IRS. It is so fundamental and basic in this society that, when you make a deal, you are expected to live up to it. It shouldn't be necessary to put into law a requirement that our Government live up to a written agreement that it enters into with its citizens, but I am afraid it is necessary, and therefore we ought to do it.

We also prohibit the seizure of property that has no equity or little equity. We see small business people being put out of business where nothing is gained by it for the Treasury. The assets which were seized have no equity or little equity, and yet they could produce revenue to pay off prior tax bills if we would allow those businesses to stay in business. So, this bill does change the rules in terms of the seizure of property with little or no value.

And also in the bill, we would require that the IRS not evaluate personnel based on things like the number of seizures and levies that they carry out.

Mr. Chairman and other members of the committee, the citizenry of this country has expected for the last 200 years that their Government is going to treat them fairly. It is particularly important where we have given such extraordinary powers to an agency like the IRS that we put limits on that power. Our Constitution set limits on governmental power. We are celebrating the 200th birthday of that Constitution. No agency of this Government that I know of has broader, more extraordinary powers than the IRS. That is why it is more important with the IRS, than with perhaps any other agency, that limits be placed on those powers.

Again, let me commend you, Mr. Chairman, as well as those committee and noncommittee members who have been so active in this struggle. I think we are finally going to see it reach some fruition this Congress.

Senator PRYOR. Senator Levin, thank you. Are there questions by our colleagues for Senator Levin?

[No response.]

Senator PRYOR. Let me just ask you this one question, if I might. After your 1980 hearings, I hope you were not audited by the IRS. Were you, Senator Levin?

Senator LEVIN. I was not, but I must tell you I assumed that I might be, given the history of some of our prior colleagues with the IRS. I am glad there are so many of us who will not bow down to either the possibility or the threat because we know it is indeed possible. It shouldn't be possible. We shouldn't have to worry about that kind of thing, but I think every one of us has to assume that it is possible, that it might happen, that we might be audited whereas otherwise we wouldn't have been.

I am sorry that I even had that feeling or that I have that feeling.

Senator PRYOR. Senator Levin, in the last several weeks I have visited informally with some of my colleagues, and I have said, "You know, I hope you will really consider becoming a cosponsor of S. 604. We will send you all the information about what it does." And they say, "You know, I really hope you have great success, but I don't know that I want to flag myself right now." That intimidation and fear of the Internal Revenue Service is present today in the Congress of the United States.

If we are intimidated or our colleagues are intimidated, just imagine what some of the very vulnerable small business people and small taxpayers of our country feel. Senator Levin, you have made a great contribution, and I thank you.

Senator LEVIN. Thank you, Mr. Chairman. It is a terrible indictment that we feel that way.

Senator PRYOR. I am not saying that all do, but there are some.

Senator LEVIN. No, even that we have that feeling.

Senator PRYOR. Sure.

Senator LEVIN. The feeling crosses our mind, and it is too darned bad, as far as I am concerned; and it is real proof that S. 604 is necesary.

Senator PRYOR. Thank you, Senator Levin.

Ladies and gentlemen, we have a minor change in the order in which the witnesses will be called this morning. First, let me call three of the Internal Revenue Service Officers to the desk. I call Mr. Robert Miller, Ms. Shirley Garcia, and Mr. Robert Brown to come forward.

Later, appearing with Mr. Tobias on the last panel, we will have two other Revenue Officers, Mr. Robert Bates and Mr. John Pepping, but we will start with Mr. Miller, Ms. Garcia, and Mr. Brown.

Second, I would like to state that I have added up the years of service of these Revenue Officers, and it comes to a grand total of 100 years of service for these five officers. So, I think individually and collectively they can speak with great authority as to what is really going on in the area of collections, seizures, and levies. They can help educate us and illuminate us on the policies and implementation of the present system.

We are very proud, once again, that you have volunteered to come forward. We also want you to know that, through correspondence, we are attempting in every way that this committee can to give you the necessary protection after this hearing is over. We are very honored that you would appear today, and as fellow Americans we are very grateful.

Mr. Robert Miller has been in collections for 14 years. I believe, Mr. Miller, you are assigned to the Baltimore District, and we look forward to hearing from you. If you have a statement, you are welcome to read it or to just recite it or summarize it. Then, I will ask a series of questions, as I know will other Senators. Mr. Miller?

[The prepared written statement of Senator Levin follows:]

STATEMENT OF SENATOR CARL LEVIN
BEFORE THE
SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND
INTERNAL REVENUE SERVICE OVERSIGHT

JUNE 22, 1987

Mr. Chairman, I appreciate this opportunity to testify before your Subcommittee, and I commend you for holding these hearings. I am pleased to be a cosponsor of S. 604, the Omnibus Taxpayers' Bill of Rights, introduced by you and Senators Grassley and Reid.

These hearings are a very familiar scene for me. In 1980, the Subcommittee on Oversight of Government Management, which I chair, held hearings on the impact of IRS collection practices upon small businesses. The Subcommittee found that the IRS violates its own formal policy by taking excessive and harsh enforcement actions against small businesses without considering all available collection alternatives. Many of the IRS's own employees testified that were pressured to arbitrarily levy or seize taxpayers' assets even when inappropriate and when the tax delinquency could have been better recovered with less harsh methods.

Mr. Chairman, it has been seven years since those hearings, but it is still evident, I'm afraid, from your own hearings that there continue to be abuses of the powerful lien, levy and seizure tools Congress has given the IRS. It is obviously necessary for the IRS to have strong collection

authority, but it is distressing that such authority has all too often lent itself to abuse and excess.

These hearings are timely because there has been a significant increase in IRS activity in recent years. In fiscal year 1981, there were 8,848 seizures by the IRS nationwide. In fiscal year 1986, there were 22,450, over two and a half times as many (154 per cent increase).

The number of levies has also more than doubled, going from 740,103 in fiscal year 1981 to 1,617,982 in fiscal year 1986 (119 per cent increase).

During this same time period, however, the number of tax delinquent accounts rose by only about a third, going from 1,436,000 in fiscal year 1981 to 1,938,000 in fiscal year 1986 (35 per cent increase).

This increase in activity is not solely the IRS's initiative. In fiscal year 1987, Congress appropriated an additional $600 million to the IRS and required the hiring of 2,500 additional auditors in order to enhance taxpayer compliance and increase tax collection. Collecting delinquent taxes is certainly one of the more desirable and least painful ways of raising revenues for the Treasury. However, it is essential that such increases in tax collection activity be accompanied by a constant respect for the rights of the taxpayer. It is apparent that legislation in this area is

necessary. There continue to be too many examples of IRS abuses for us to simply rely on the IRS's discretion to collect taxes in the fairest manner possible.

I have worked to improve taxpayers' rights for several years, both by introducing legislation and supporting legislation sponsored by Senator Grassley, the former Chairman of this Subcommittee. We have made some progress. For example, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 contained a provision requiring the IRS to release liens within 30 days once the tax liability has been paid. TEFRA also required that the taxpayer be notified prior to any levy on his or her assets.

S. 604 generally continues in the right direction of strengthening taxpayers' rights. While I have a few concerns about certain aspects of the bill, which I would like to forward to the Chairman in writing, I am very supportive of the thrust of this legislation. I am also pleased that S. 604 includes several provisions very similar to bills I have introduced in previous Congresses.

Specifically, S. 604 makes written installment pay plans between the IRS and the taxpayer binding, unless the taxpayer provides incorrect information or unless the taxpayer's financial situation changes significantly. I have advocated such a proposal in the past, because installment plans are often not only the fairest way of collecting delinquent taxes,

but also more cost effective than more drastic methods such as seizures. Several IRS officers at my 1980 hearing noted some of the drawbacks of seizures. For example, one stated: "...seizure action was considered the ultimate resort because of the potential damage to the taxpayer and the government. The damage to the taxpayer is self-evident. The damage to the government comes from the fact that all too often the amount of money received from the sale of seized assets does not even approach the taxpayer's total liability."

S. 604 would also prohibit levies on property if the expenses of the levy would be greater than the value of either the property or the tax liability. This would address a long-standing concern of mine about the IRS practice of seizing assets which have little or no value.

Another provision in S. 604 would prohibit the IRS from evaluating its personnel by the amounts collected through their audit and investigative activity. Problems in this area were also raised in my 1980 hearing. IRS employees testified that they were often pressured to lien or seize taxpayer property contrary to their own training and professional judgement, and contrary to stated national IRS policy. As testimony during these hearings continues to demonstrate, stated IRS policy has not changed the way evaluations of IRS personnel are conducted; perhaps legislation will.

Again, Mr. Chairman, I commend you for holding these timely and necessary hearings. There are few issues more important than guaranteeing the right of citizens to expect and receive fair treatment from their government, particularly in the area of tax collection where extraordinary powers have been placed in the hands of the IRS and where limits on those powers must come from Congressional oversight and corrective legislation.

## STATEMENT OF ROBERT MILLER, INTERNAL REVENUE SERVICE REVENUE OFFICER, BALTIMORE DISTRICT

Mr. MILLER. I would like to say just a couple of things, and then perhaps I will say a little bit more later. I want to congratulate you and the other Senators for having the courage to take on this tremendous duty that you have seen fit to go forward on and just let you know that, after having been an employee with the Internal Revenue Service for almost 14 years in various places around the country, that you should not feel any fear of the Internal Revenue Service, that if anything, the Internal Revenue Service is afraid of you.

Quite often, I have found in my travels through the IRS in the Manhattan District and the Brooklyn District and the Chicago District and the Denver District, and now the Baltimore District, that almost all the time everyone is afraid of the Congress of the United States and the type of impact that you could have on the IRS.

Senator PRYOR. I hope you are correct. [Laughter.]

I am for you, Mr. Miller. Thank you.

Mr. MILLER. So, thank you very much for your courage.

Senator PRYOR. We look forward to your statement.

Mr. MILLER. I am not used to speaking in public.

Senator PRYOR. You are doing a fine job.

Mr. MILLER. I just wrote down a few things here. In my opinion, on the surface of things, what is wrong with the IRS is that some employees and managers of the IRS are incompetent, they are unprofessional, and the major reason for this is that the IRS is a highly stressful organization that places undue and unreasonable pressure on its employees.

We have a very fast-paced society and a highly complex tax system that is difficult, at best, to administer; and yet, we choose to add more unnecessary pressure within the IRS. And this translates into pressure on our country's citizens. I do have a few things to say in general, but I will be interested in going right into the heart of the matter with regard to the IRS abuses.

I think that all Revenue Officers that I have ever known have felt tremendous pressure on the job. We always feel like we are under the gun, no matter what we do, it is wrong. I think there is so much stress in this country that it goes into the IRS. The IRS in turn produces tremendous negative feedback, negative intimidation, fear, harshness, abusiveness towards its employees; and as a result, that same harshness, that same abusiveness is brought down to the level of the individual taxpayer.

When I started with the Internal Revenue Service back in 1974, working in the Brooklyn District, I found that I worked with a number of stable individuals. I found that it was a pleasure working at that time with the IRS because I was left alone to do the job. There were no statistical pressures. There were no management pressures that were there on a regular basis. Some time thereafter, heading towards the late 1970s and early 1980s, the pressures became worse and worse. They continued to magnify.

It got to the point where, with regard to Senator Levin's and Senator Cohen's bill in 1980, I saw that Senator Levin and Senator Cohen made certain recommendations to the IRS, particularly one

where they said that managers—collection group managers—should not make seizure mandates to revenue officers. I got a copy of the recommendations from Senator Levin's and Senator Cohen's offices; and I brought those up to the group managers in the different districts within which I worked, and I said, here they are.

Senator PRYOR. In other words, these were your superiors?

Mr. MILLER. These were my superiors. I said: Here you are; you are not legally entitled to make mandates of seizures and take other enforcement actions illegally. Basically, what happened was I was told: No one ever has told us to bring this out to the revenue officers. In fact, we have never heard about it ourselves. So, the IRS upper management took the position with the Senators in that Oversight Committee in 1980 that they were bringing this message down through the ranks of the IRS. Not at any time from 1980—and I think it was October or November when that Oversight Committee report came out— not any time did anyone in the IRS to my knowledge, and working every day there as a Revenue Officer, bring that news to us. In fact, seizure rates increased. Levies increased. Other enforcement action was demanded of us.

How many levies have you had this month? How many seizures have you made this month? We don't have many seizures this month in this group—all kinds of things like that, continually occurred from 1980 until almost the present time. The IRS does seem to be making a turnaround; it seems to be heading in the right direction at this point; but there are pressures that are coming through in different ways.

Those pressures are coming through with regard to quality performance. Have we dotted every 'i' and crossed every 't'? Have we done an unbelievable number of minutia actions with regard to cases? With regard to seizures, now the word is—rom what I understand—if you haven't taken distraint action, that is if you haven't made a seizure in a given case where you should have made a seizure, it is now monsidered that you have made a quality error.

So, how many ways can we mask these different pressures? There is tremendous pressure coming through the Internal Revenue Service down on the managers, and many of the managers—y the way, are very fine individuals—but feeling this tremendous fear, and then carrying it down to their subordinates—people like myself—constantly on a daily basis.

Senator PRYOR. Mr. Miller, I am going to allow Ms. Garcia to make a short statement, and then I am going to ask a series of questions, but I have one question now.

From the mail I have received and the phone calls, I must say a lot of were anonymous. They are afraid to sign their names. There is a great fear out there of the American taxpayer of the Internal Revenue Service. I also think there is something I am learning today. I think there is a great fear of the Internal Revenue Service of employees their superiors. Is this correct?

Mr. MILLER. That is true, sir.

Senator PRYOR. We will go forward into that subject in a moment.

Shirley Garcia has been in the Collections Division of the Internal Revenue Service, I believe, for some 16 years. We look forward to your statement, if you have one, and I look forward to sharing

some questions with you in a moment. We once again thank you for appearing. Do you have a statement?

**STATEMENT OF SHIRLEY GARCIA, INTERNAL REVENUE SERVICE REVENUE OFFICER, BALTIMORE DISTRICT**

Ms. GARCIA. I don't have a statement at this time, but I must agree with everything that Mr. Miller has said. And as the questions are given to me, I think I have enough information to answer and supply you with the data that is needed to handle and resolve your bill.

Senator PRYOR. Thank you, Ms. Garcia.

Mr. Robert Brown is our third witness on this panel. Mr. Brown, let me applaud you for 26 years you have been with the Internal Revenue Service. That is a long time. You have had a tough job, and I would like to ask first if you have a statement or any remarks you would like to make at this point?

**STATEMENT OF ROBERT BROWN, INTERNAL REVENUE SERVICE REVENUE OFFICER**

Mr. BROWN. Thank you, Senator. First of all, I have never been before a panel before, so I may seem a bit nervous. I want to thank the committee for allowing me to answer any questions and testify.

I started with the Service in 1961, so I have seen quite a lot of changes in the collection of taxes, and I will try to answer any questions in reference to this that anyone addresses to me, to the best of my knowledge; and I think I can give you some pretty good insight on the changes that have happened in 26 years.

Senator PRYOR. Mr. Brown, what we need is an education. Truly, we are just like every other American taxpayer here, even though we are members of the United States Senate. We don't know what goes on in the IRS. We know probably more about what goes on in the KGB than the IRS. It is a mystery to us. [Laughter.]

We operate on myths and rumors and suppositions and presumption and assumption. So, we are looking forward to your illuminating us. We do have one member of the Finance Committee who arrived during the course of your testimony. We are very glad to welcome Senator John Heinz. John, do you have a statement?

Senator HEINZ. I do, Mr. Chairman, and I ask unanimous consent that it be placed in the record, so we might continue with the testimony of our witnesses.

Senator PRYOR. Without objection.

Mr. Miller, I would like to start off with you if I might. Do you feel that there is an inordinate amount of pressure today on the Revenue Officers to collect, seize, and levy on the American taxpayer?

Mr. MILLER. Basically, what we are being told at this point, sir, is to put our attention on quality.

Senator PRYOR. Now what do we mean by "quality"?

Mr. MILLER. That is a very long-winded answer, based upon what I have heard so far. Quality means that you document everything in your case.

Senator PRYOR. Does that mean affording the taxpayer his rights? Is that what you mean by "quality"?

Mr. MILLER. That is what I mean by quality; it is not necessarily what the Internal Revenue Service means by quality. I think that what happens is, in looking for certain goals to be achieved, we stray within our activities—within most of the activities.

Senator PRYOR. Let me ask this question. Have you sensed in your many years with the IRS in collections that sometimes there are unreasonable procedures against a good-faith taxpayer out there who is trying to, work out an installment agreement if there is in fact a dispute?

Mr. MILLER. Yes, sir, unfortunately so. We are being told one thing—that quality is what we are supposed to be doing as far as our performance now—but at the same time, the pressure continues. What I have to seen—to give you an example—in the recent past three or four weeks is a typical example. I have had a taxpayer on whom I was assigned a case to collect $36,000 for one quarterly payroll tax period. What happened was that the taxpayer had another liability with a different business. You see, the taxpayer happened to be the owner of numerous restaurant-type businesses. And one of my associates had a case on another business; that was in the process of being resolved.

When I became aware of the fact that the taxpayer was going to be in the office meeting with my associate, I went over to the taxpayer and I said: Sir, you have this liability on this corporation for $36,000, at which time the taxpayer produced $100,000 in checks, handed them over to me voluntarily, bringing the corporation completely current with its payroll taxes, with the exception of the one $36,000 liability that I had.

He said: Mr. Miller, I will be glad to pay that off by approximately June 25, 1987. I said: Great; that is wonderful. What an easy case. What a cooperative taxpayer.

Whether or not he has had other liabilities with other corporations didn't mean anything to me at that point. He was cooperative in trying to work them out. So, he said to me: Mr. Miller, can you by any chance get me a lien waiver—that is, hold off temporarily from filing a lien—so it doesn't damage our credit and make it hard for us to get financing in the future? At which time, I said: It sounds reasonable to me. I have no problem with that; I will request that of my manager to sign off and give the approval on a lien waiver.

The way it turned out, we have a certain number of days within which to make a lien determination anyway; and I was only really requiring an additional 12 or 15 days beyond the period I already had in which to make the lien determination. I went to the manager, asked him to sign off on the lien waiver—and by the way, the taxpayer gave me an assignment of proceeds from the sale of another business to pay the $36,000—and the manager said: No. I am not going to sign off on the lien waiver. I feel a lien should be filed to protect the Government's interest.

And I just shook my head. I said: This is typical. You feel like you are working in a mental institution. You walk up to a manager with a reasonable request, and there is this fear—this pressure—that the managers are feeling. They are afraid to sign off on payment agreements. They are afraid to sign off on things to give the taxpayer a little bit of additional time to keep their businesses

strong and become better taxpayers and stay strong in the future for paying their taxes.

Senator PRYOR. In cases like that where you think a reasonable offer has been made and there is a way to work it out, are you saying that the manager will not let you go forward in culminating that agreement?

Mr. MILLER. Yes, sir.

Senator PRYOR. Why is the manager doing that? Why doesn't he say, "Good, we are going to get our money this way. They can stay in business." Why is the manager taking that position in so many of these cases?

Mr. MILLER. That is the way it used to be, sir. You would go up to your manager and you would have no problem getting things signed off on; but somewhere along the line, merit pay came into being.

Senator PRYOR. All right. Your superior is the manager?

Mr. MILLER. Yes, sir.

Senator PRYOR. You are a revenue officer out there in the field. Is your manager under pressure and, if so, from whom?

Mr. MILLER. The manager is under pressure from the field branch chief.

Senator PRYOR. To do what?

Mr. MILLER. To meet certain goals and objectives for each year.

Senator PRYOR. Quotas?

Mr. MILLER. Sir?

Senator PRYOR. To meet quotas?

Mr. MILLER. This year the objectives are not quotas, that is, this new fiscal year. The whole thing has turned around to look for quality; but in the past, we were looking for quotas. Now, that doesn't mean that beneath the surface the same disguise isn't present, that there is pressure on us.

I think I can give you a very clear example: installment agreements are almost unbelievable to put through today. It is like putting thread through a very small eye of a needle. To get an installment agreement through, you have to get your manager to sign off it; and then that has to go to your field branch chief to sign off, which wasn't done before.

What you will find quite often is the manager will say: I find this, this, this, and this wrong with this agreement. I think the taxpayer should do these different things. So, you go back to the taxpayer, and you say: Sir, even though I thought your agreement was reasonable, the manager is asking for certain additional items. And then, it may go to the field branch chief, and the field branch chief will do the same thing. And the field branch chief may bring you in as a revenue officer and interrogate you and treat you as if you are the taxpayer, and say: What about this, this, this, and this? Why do you have to have a life insurance policy with a $294.00 premium each year? Why can't you get a policy with a premium of $120.00? See. It is the taxpayer's choice. It is not unreasonable in my opinion. And you just go on and on and on.

What about the tuition for parochial school? The taxpayer doesn't have to send his kids to a parachial school. What about the kids in college? Those kids can drop out of college for a year or two.

Senator PRYOR. You are under pressure to collect, seize, and levy. Is this correct?

Mr. MILLER. I was under pressure to do that. At this particular point in time, I am being pressured for quality; and quality is not necessarily, in quotes, what you and I would consider real quality, Senator.

Senator PRYOR. If you don't collect, seize, and levy in a certain number of cases, does this have any impact upon your career with the Internal Revenue Service?

Mr. MILLER. In my particular office—I have to be fair—probably because of the pressure that I have put on management, the pressure is not there because I constantly bring it to their attention. There are other pressures.

To be fair to you, probably in many other offices, right in our own area, this is true.

Senator PRYOR. Each office is sort of an individual fiefdom or kingdom and they sort of run their own shops the way they want to. Is this correct? They don't necessarily, for example, distribute the Agent's Manual, that is, the IRS Manual, to all agents equally. Would that be correct?

Mr. MILLER. Not every revenue officer has a manual. Each office is different; in fact, each group is different.

Senator PRYOR. Let me read you a statement, given in April by Lawrence Gibbs, the Commissioner of Internal Revenue, before this committee; and I quote:

"I would like to note here that enforcement personnel are not evaluated on a quota system. In fact, we have a policy statement, P. 1-20, which states that tax enforcement results and tabulations shall not be used to evaluate such personnel or to impose any production quotas or goals. I have attached a copy of that policy statement to my testimony."

Were you aware of that policy of the Internal Revenue Service?

Mr. MILLER. I was aware of it, sir.

Senator PRYOR. Now, Mr. Miller, a memorandum has come to our attention through a source dated February 17, 1987, to all Group Managers, Field Branch II from Chief, Field Branch II. We would like to distribute a copy of this IRS internal memorandum. It states:

For a five-week period, this is a sorry report—

Making reference to the number of seizures, collections, and levies.

Not one manager has come forward to explain the poor performance and statistical indicators. Example: One CID referral, four groups had zero. Seven seizures for the branch, one group with zero, two groups with one each, and a number of low closures. . . .

Then it says:

Where are you as managers? What are you doing? How is it effective? The revenue officers that are performing above a satisfactory level will be rewarded, and the ones that are not will be documented and corrective action taken. Your mid-year evaluations will be prepared in approximately one and a half months. You will be evaluated on your accomplishments or lack of accomplishments. Need I say more? Wilbur E. McKean

Who is the Chief of Field Branch II.

What does that do to revenue officers? What sort of a memorandum is that? What does that say? Doesn't that say that there are quotas? Doesn't that say that your future service with the IRS and your future career is going to be based on some sort of a statistical information concern?

Mr. MILLER. Yes, sir.

Senator PRYOR. First, Ms. Garcia, it is our understanding in talking with various people across the country about this problem that groups compete with other groups as to the number of dollars, seizures, collections, and levies. Does this take place? Is there competition among groups?

Ms. GARCIA. Yes. In the office that I work in—and Mr. Miller does not work in the same office as I do.

Senator PRYOR. I see.

Ms. GARCIA. We have revenue officers there who are, on a daily basis, comparing how much they have collected on a day-to-day operation. So, yes, the competition is there.

Senator PRYOR. We have a statistical report that has come to our attention from one of the offices, and I don't know which part of the country because we are getting a lot of this information now. I don't know that we have individual copies. It is awfully hard to read down those columns, but let me point out to my three colleagues here this morning that this seems to be the sort of thing we are discussing.

In February 1987, one group was in first place; one was tied for second place; and one was third place. It is like applicance dealers giving rewards and trips to Hawaii on the number of stoves and refrigerators sold.

And it seems here there is real competition among groups. Does that prevail?

Ms. GARCIA. Yes, it does. And like I said, in our office, they are still using these comparative statistics for each group and for each member of the group as well.

Senator PRYOR. If you received an IRS memo from your superior, such as we have introduced—and we will make that, by the way, Exhibit A, and we will make this chart Exhibit B—how would you be affected by that? What is the message that comes through to you as an officer of the Internal Revenue Service?

Ms. GARCIA. The message that I got out of this, and it was brought up in our group meeting, was that we had to get out and make some seizures.

Senator PRYOR. You had to do what?

Ms. GARCIA. We had to go out and make some seizures to keep the pressure off the manager's back. I looked at it as: If I don't do it, some adverse actions will be initiated; and in fact, I did not make any seizures. I refused to make any. And as of this date, they have attempted adverse actions on me; but most of the people in the group at the time we received this memo, and we looked at it, we just said: My gosh, this place has gone crazy. And everyone began to fear: What are we going to do? We are trying to work together as a team to see what we can do to keep our manager ahead and out of trouble; and of course, there were some revenue officers who volunteered to go out and make seizures to keep the manager in good faith with his chief.

Senator PRYOR. Now, Ms. Garcia, up at the top right hand column of this memo, it says: To all revenue officers. I need your help to avoid getting into trouble. And it was signed, but we have scratched out the signature. We didn't want to get him in trouble in this committee. Don't name the person, but what does that little attachment mean?

Ms. GARCIA. That little attachment meant to me, from that manager, that he needed our help in order to get—in other words, we always say "to meet the merit pay objectives," so that he can get his raise when the time comes. So, the revenue officers would band together and try to keep him from getting into trouble or receiving any type of adverse actions from his chief. But that is basically what we got out of it. They are looking only at the merit pay objective.

Senator PRYOR. I will tell you what I am going to do. I am going to stop my line of questioning, and we will come to Mr. Brown in a moment. We are going to open the questioning up with Senator Heinz.

Senator HEINZ. I am just going to ask one very brief question, Mr. Chairman.

Senator PRYOR. Certainly.

Senator HEINZ. And I thank you for yielding. Rather recently, one of my constituents in Philadelphia received a notice that he owed money to the Internal Revenue Service, and he went to considerable lengths by mail and by phone to explain where the IRS had made an error. Notwithstanding those repeated efforts, one Saturday a very big, rather threatening looking person came to his home—on a Saturday morning—and in front of his wife and kids said: You owe the Government money, and if you don't pay, something very unpleasant is going to happen to you.

And as it turned out, he didn't owe the IRS anything. The IRS actually owed him a refund. What I have described, I think, are loan shark tactics applied by the IRS—in this case totally unjustly. But even if collection tactics of one kind or another are justified—and obviously, there are times when they are—loan sharking is not a Government authorized method of operation.

My question to you is this: Is it appropriate or acceptable that innocent taxpayers are subject to such loan shark tactics as a result of overly zealous management directives by the IRS? Mr. Miller, Ms. Garcia, any comment?

Mr. MILLER. When you feel pressure, it causes an individual to not act in the normal way that the individual would act. So, as a result, you find that there are revenue officers who will go out and in meeting with the taxpayer, feel such pressure, that they can't just simply come across and say: Good afternoon, sir. My name is Robert Miller, and I am with the Internal Revenue Service; and I have a piece of paper that indicates that you owe $23,000. Does that sound right to you, and can you pay that today?

They go in and they say: Treasury Department. I am with the Internal Revenue Service.

Senator HEINZ. Eliot Ness. [Laughter.]

Mr. MILLER. And they are nervous. They are afraid. They can't function. They are feeling that pressure. They can't perform in a

normal, business-like fashion. And so, you have revenue officers—not many—who are like that, but very, very few.

Senator HEINZ. Is that a result of the kind of pressure the chairman has described? Is that why that happened?

Mr. MILLER. Yes, sir. I believe that is true. It is because of that pressure that is constantly coming down through the organization.

Senator HEINZ. Mr. Brown, is that your experience, too?

Mr. BROWN. I would say yes. And also, in our training of revenue officers, it comes down that when you are indoctrinating a new revenue officer, he must have a certain image. I happened to be an instructor in a training class at one time, and I was trying to give the revenue officers some practicalities of my position in dealing with a human being.

And I was frowned upon by my lead instructor because I should have told them the way they want the Service to project you. When you go into the office, you should have your credentials and hold them beside your head. You don't hold them at this level or that level. You want the taxpayer to see the credentials, and you want to give them the impression that you are there to take care of business.

I was trying to give the trainees the practical side of the job, since you will be dealing with human beings, and every case is different. And my evaluation as an instructor one time was not as good as it should have been because I did that.

Senator HEINZ. Ms. Garcia?

Ms. GARCIA. We do have a lot of revenue officers who do use that tactic. Most of the time, they are—as Mr. Brown said—the new recruits, and they are trying to make a name for themselves because they are under the impression that the more seizures they make, the more harassment they give to the public, the more dollars and cents will come into the Service. And it looks excellent on their daily report.

So, sometimes the pressure is there from management, and sometimes these people are just trying to get ahead. Okay? So, yes, the pressure is there.

Senator HEINZ. Very well. I want to thank you all. We want the Internal Revenue Service to collect money that is due the Government; but we do not want, because of inexperience or because of quota or other incentive systems, Government employees from the IRS to go out and act like mob employed enforcers. And you have been very helpful. Thank you very much.

Senator PRYOR. Senator Grassley?

Senator GRASSLEY. Was there any fear on your part that there might be any retaliation against you for coming here to testify? And was there any pressure put on you not to testify?

Ms. GARCIA. No.

Mr. BROWN. No.

Mr. MILLER. No, sir. I have just had so much fear for so long with the Internal Revenue Service that it has just grown to the point where I don't care any more, to be honest with you.

Senator GRASSLEY. None of your higher-ups asked you not to testify?

Ms. GARCIA. No, they did not.

Mr. BROWN. No.

Mr. MILLER. No.

Senator GRASSLEY. We have heard testimony in these hearings that many problems stem from the fact that the national policy decisions and rules on procedure don't filter down to the district level. So, we get certain local offices where district managers make decisions and implement policy the way that they want to, regardless of what has been decided here in Washington. The chairman has already alluded to this a little bit, but I want to know if you agree with that assessment.

Mr. BROWN. Definitely.

Ms. GARCIA. Yes.

Mr. MILLER. Definitely so.

Senator GRASSLEY. In your experiences, have various tax laws been interpreted or applied differently by local agents in separate districts? In other words, is the application of the law up to the whims of local managers or agents in some circumstances?

Mr. MILLER. Yes, sir.

Ms. GARCIA. Yes.

Mr. BROWN. Not the law, but the manual itself. You see, the manual is our bible, and so we deal with that strictly; but it is always interpreted. We go from Washington, D.C., the national office, to our regional office in Philadelphia to our district director in Baltimore to our representative in Washington. I am assigned with the Landover, Maryland office; and when it comes through four different people's hands, everybody interprets the manual differently, or to whatever advantage they want to interpret it.

The manual may say one thing, and when it gets to our desk, it sounds like it is completely the opposite of what the manual says; and we have to abide by what is on our desk at that particular time.

Senator GRASSLEY. Let me take off right there because we have heard the same testimony, where the IRS has argued that the IRS manual guidelines are not binding on the IRS and confer no rights to taxpayers. Are there any internal sanctions against agents or managers who disregard or break guidelines?

Mr. MILLER. We are often told to follow the manual. Occasionally, you will have a manager—in fact, I just had one recently, who has since left—who was so strictly in tune with the manual that there was very little flexibility, as far as dealing with the taxpayer. Normally, I have found that if you deal with the taxpayer in a cooperative, friendly, receptive, understanding, compassionate way, that what happens is the taxpayer will say: Mr. Miller, it has been painless; it has been easy. Thank you for helping me keep my business going. Unfortunately, there are those who take a harder line—too hard a line—without having the proper balance in their dealings with the taxpayer; and they will simply look at a case file, rather than consider that they are dealing with a human being here who has problems and that there are variable issues in each case.

They look at the case file without ever having met the taxpayer, and the group manager will say: I think you should make a seizure; or: I think you should levy this taxpayer. I think you should do this or that.

So, there is a great deal of subjectivity that is open to the employees of the Internal Revenue Service, especially the superiors who are there who can literally say do this or don't do this with regard to a case. The manual is there, I thought, as a guide; but there are managers who take it very, very strictly. And that creates artificial pressure on the revenue officer. It makes it very difficult to meet and deal with the every-day taxpayer out there who is struggling hard to keep their business going.

And as a result, a number of taxpayers are abused and are hurt because of that difference in subjectivity, that taking a hard line rather than taking a reasonable line.

Mr. BROWN. A good example of what he gave is the lien determination situation, you know. The manager said you can waive this right. We are supposed to use our judgment in dealing with taxpayers. That is one of the requirements of the job: judgment. But you can be second-guessed by your manager, you see. So, we are in a paranois state at times; we don't know which way the managers are going to go.

Senator PRYOR. And the managers never come face-to-face with the taxpayers? [Laughter.]

Ms. GARCIA. No.

Senator PRYOR. You talk to the taxpayer. You get to know the taxpayer.

Mr. BROWN. Right.

Senator PRYOR. But the manager—your superior—never does?

Ms. GARCIA. Never.

Mr. BROWN. No, you will be dealing with a taxpayer, and you have to run to your manager for approval. And he will say: Do this, Bob, or do that. And I have to run back to the taxpayer and he will ask why. Then, I have to run back to the manager and say that. So, a lot of times in dealing with taxpayers, there is a lot of running back and forth, which to me gives a very poor image. We are supposed to make decisions; we are trained to make decisions. I can make a decision, but when I am going to be second-guessed by my manager, I get paranoid.

Senator GRASSLEY. Since each of you have told us what the situation is in regard to how production is measured and the extent to which pay raises and promotions are given out on the basis of that performance, on a statistical basis, I would like to have your view on what sort of methods for evaluating IRS collection agents on performance you would suggest? How would you like to see that done?

Ms. GARCIA. I would like to see it done basically on technical knowledge, your knowledge in performing your job, because we have so many revenue officers who do not know the manuals, or they do not know the codes. They don't even know how to read the computers, and they will get a notice and go out and collect on an account and don't have the faintest of idea why the taxpayer even owes the money.

So, I think that everyone should be evaluated basically on their knowledge, not on statistics—on how many you have closed—because I have found myself that a lot of times if you tell a person why they owe and how we arrived at it, they are willing to pay it.

By going out and telling somebody you owe and I want the money; that is the wrong approach.

We need a little more public relations training in our classes as well. Okay? What we are sick and tired of, and I don't know if Bob has it in his office—also is that if we don't do as the managers say in collecting the bills on our tax liabilities, we are threatened with what they call the critical elements as well.

Senator PRYOR. What elements?

Ms. GARCIA. They call them the critical elements that they evaluate revenue offices on. There are like five or six, and then they are broken down, (a), (b), (c), or (d). If you miss one of those elements, there is a chance that they are going to initiate some type of adverse action. So, again, it gets back to having—I would love to see everybody evaluated on technical knowledge and also the meeting and dealing with taxpayers, resolving their problems, keeping them current, and keeping them out of the IRS so that we can move onto much more productive things.

Mr. BROWN. I would also like to see it be evaluated on quality of work. This new emphasis on quality, which came down in the last fiscal year, is very good; and I do quality work because I believe in dotting every "i" and crossing every "t". We all know that is time-consuming, and it may take away from some of my other duties as a revenue officer because we do have a lot of paperwork in our jobs. We don't have a secretary. We don't have anything like that. We do all the paperwork ourselves, including stamping every envelope and sealing it. We have a large mail-out.

But I am anxious to see how this quality situation is going to do down the road because I have been around for 26 years, and I have seen them have on emphasis on certain things. It may be quality one year and closures another year or something like that another year. So, as my manager said one time, when he said we were going to emphasize quality: Bob, you continue doing your quality but I want plenty of it, which means that he still wants me to continue on with what I was doing in a quantitative manner instead of a qualitative manner. So, quality, I think, should also be a factor.

Senator PRYOR. Senator Reid?

Senator REID. One of the things I don't understand, and I would like some help. I have heard two things today. One, Mr. Brown, you talked about lots and lots of quality. I don't understand what that means; and is that different than this merit pay thing I hear each of you talking about from time to time? So, would you address those two issues, each of you? What do you mean by lots and lots of quality? That is a very abstract term.

Mr. BROWN. Thank you. In other words, getting back to our statistical report here, if we don't close X number of cases in the course of a month, you know your name is going to be on the bottom of this list, etcetera. So, when the manager says we are going to emphasize quality this fiscal year, he means we should not deemphasize the fact that we still have so many cases to close in the course of a month.

Senator REID. Is there a certain guideline that is followed, though, to arrive at this so-called "quality factor"?

Mr. MILLER. I don't have the report with me, but basically what the IRS is doing is it is preparing a report that breaks down error

findings in closed cases. And this is filtering down through the region and down through to the local level—percentages of error. What we are being told is that if you didn't document it in the case file, you didn't do it. What we are told today with regard to quality is that the first step when you take in a case for collection is you indicate that you have received the case on such and such a date. Then, the next step is you document your plan of action. The third step is to write DFP in your case file, Demanded Full Payment, when you go out to meet the taxpayer. Now, I don't know what else to talk about when I go to meet taxpayers. I usually say: Sir, could you pay this today, or what arrangements do you need to make to pay this? But we are required to put DFP as our first history entry. Warned of Enforcement Action, WOEA—that is part of their statistical analysis now with regard to cases.

WOLF—have you WOLFed your taxpayer? Have you Warned of Lien Filing?

Senator REID. Now, are you telling us, Mr. Miller, that to arrive at this abstract quality factor, you could go ahead and do all these things; but if you didn't have it on your report, you wouldn't get credit for it? Is that what you are saying?

Mr. MILLER. It would be written up, and you would be faced with potential firing.

Senator REID. Even though you did collect the money?

Mr. MILLER. Even if you have collected the money, you weren't effective in your workload management, your case management. If you don't handle all your cases simultaneously, which is a problem of the revenue officer, if you don't follow up within 10 days on every case, if you don't write all these items in your case file, if you don't have good summary statements. See, the whole idea is to make it clear——

Senator REID. Could you not be a good collector but yet have good quality because you listed all these things?

Mr. MILLER. Absolutely.

Ms. GARCIA. Yes.

Mr. MILLER. If you can write neat, if you can put all these things in your file—not do much of anything—but as long as you have them down there, it shows good quality. You could be a good collector and good in meeting with people and have good interpersonal relationships with the public and be a very fine revenue officer; but if you didn't write it down, you are in trouble.

Senator REID. Do both Ms. Garcia and Mr. Brown agree with the statement made by Mr. Miller?

Ms. GARCIA. Yes, I do.

Mr. BROWN. Yes, I do.

Senator REID. Let me follow up on this then. Who determines these quality factors? Do you know who determined them?

Mr. MILLER. I think that ultimately what we have is regional analysts in the IRS who are there analyzing the work, looking for quality. We also have quality review sections, and they have determined what particular factors are to be looked at.

Senator REID. Let me ask this then. I know that at least two of you have mentioned this merit pay thing and that, if you don't do certain things, you and/or the manager here is going to be in trou-

ble because he doesn't meet the merit pay standards. Is that different than the quality factor that we just talked about?

Mr. MILLER. In effect, in this particular time, there is no difference in one respect because, if we don't do a lot of those things that are considered quality—whether they be artificial or not—then the manager will not be able to meet his merit pay objectives, which are part and parcel of that quality that we are being asked to do and are part of the 1987 fiscal year objectives.

Senator REID. Merit pay relates to managers and not to revenue agents?

Mr. MILLER. That is right. Basically, you have two things here, sir. One is merit pay——

Senator REID. And that only affects management?

Mr. MILLER. That affects management but then comes down to the revenue officer constantly because the revenue officer doesn't make the manager look good. Then, the revenue officer feels pressure.

Senator REID. Would both Ms. Garcia and Mr. Brown agree with that statement that has been made by Mr. Miller?

Mr. BROWN. Correct.

Ms. GARCIA. Correct.

Senator REID. Let me carry on just a little bit then, if I could, Mr. Chairman. Tell me why you would testify here today. I don't need a long dissertation, but tell me what good do you think it is going to do?

Mr. MILLER. I think that ultimately there are two things——

Senator REID. I think this is obviously not going to help your career. I mean, I think we have to all understand that.

Mr. MILLER. There are two things that are important to me. The overriding thing in my mind is that I want to help the country. I am sick of seeing people abused. I don't like to work in an atmosphere of fear and pressure, and I don't like to treat people improperly because I don't feel good when I go home at night. I want to feel good.

I want to feel like I am doing something to help people in the performance of my duties, and I know I have in many, many hundreds of cases—thousands of cases—in the past. That is what I like to see; I like to see success on the part of the taxpayer, and I like to see the money come into the Internal Revenue Service, which acts as the guardian of the circulatory system, so to speak, of the country, so that we continue to survive and we continue to progress as a nation and lead the world towards greater heights.

But basically, I wanted to see if it were possible that, with your great dedication and your great courage, on the every-day level of life that you could possibly use your wisdom and the committee to bring about the enactment of certain laws which will stop these abuses from being perpetrated on the taxpayers.

And I think that can be accomplished in two ways: one, the enactment of the laws, and two, a very rigorous follow-up. I think the fact that you are calling for an inspector general's office to follow up and make sure all these things are done—this was not done in the last oversight committee hearing. There was no real strong and continuous follow-up.

I can't tell you what to do obviously. You are much wiser than I. Perhaps you could create an inspector general's office with a large staff that could take complaints from revenue officers, group managers, the public; and we could be right out there and be in the limelight when we did something wrong.

Second, I felt that, as far as the IRS is concerned, I think the problems in the IRS are very real problems of dealing with pressure in a very fast-paced society. I think they are just indicative of the problems in our society. I don't think the IRS is that divorced from the rest of society. Perhaps in the process of being involved with this, I could somehow help.

Senator REID. I think you have done a good job of explaining that. Ms. Garcia and Mr. Brown, would you again like to agree with Mr. Miller as to why you are here? And if you would want to add something briefly, you may do so.

Ms. GARCIA. I do agree with what Mr. Miller said, and I came forward simply because, again, I think that the public should know that not only are they being abused by the Internal Revenue Service, but the employees themselves in a very indirect manner are being pressured—pressure is being put on the employees to do this job.

Senator REID. I think you have done a good job of explaining that. You would agree, Mr. Brown, to that?

Mr. BROWN. I would agree, Senator. And the only thing I would say is that I came forward today because any time I see something being done wrong, or not necessarily wrong but could be done better, I am willing to step forward and do what I can.

Senator REID. Mr. Chairman, I know I am speaking for all of us on this panel when I commend and applaud these three courageous people, and I didn't say that in an offhand way—"This isn't going to help your career" we know that. But I really do believe that if we carry on in our responsibilities maybe we can make it better for people down the road. Thank you, Mr. Chairman.

Senator PRYOR. Senator Reid and Senator Grassley, let me tell you a secret about Mr. Brown that I know. Mr. Brown, you have been doing this for 27 years?

Mr. BROWN. Yes.

Senator PRYOR. When we told him we were going to do everything we can to protect him, Mr. Brown said "That does not bother me because I am retiring in three months." [Laughter.]

We do thank you, Mr. Brown, Ms. Garcia, and Mr. Miller.

Senator GRASSLEY. Could I follow up on that for just a moment?

Senator PRYOR. Sure.

Senator GRASSLEY. That reminds me of some testimony that I think was on the House side that came from the person who is charged to protect whistleblowers, and I know that these folks are not in the classification of whistleblowers yet; but for sure, the Special Counsel was set up to do that. Our basic laws don't protect people the way they should because this Counsel at that time—and I think that was a year and a half ago—said that his advise to a whistleblower is: Don't stick your head up unless you want it shot off, unless you are either wealthy enough to go your own way or unless you are ready to retire. Now, that is a sad commentary of the status of our laws that are meant to protect civil servants.

Senator PRYOR. It sure is.

Senator GRASSLEY. And that is another reason beyond the purpose of this hearing that another committee is looking into laws that ought to have "a" Mr. Brown willing to come forward even though he is not three months from retirement. Quite frankly, I hope you don't retire after three months because we need people like you in the Civil Service who aren't afraid to come forward.

Mr. BROWN. Thank you.

Senator PRYOR. One or two quick questions. Ms. Garcia, Commissioner Gibbs testified—and we have made reference to his April 21 testimony before—that the new national policy of the Internal Revenue Service was going to be to treat the taxpayer like a customer. How do you react to that?

Ms. GARCIA. Would you believe I just heard that statement about two weeks ago?

Senator PRYOR. So, the policy has not been disseminated out to the agents?

Ms. GARCIA. No, it has not.

Senator PRYOR. Is that true with you, Mr. Miller and Mr. Brown?

Mr. MILLER. I haven't heard that, sir. I haven't heard that policy.

Senator PRYOR. Mr. Brown, have you ever heard that?

Mr. BROWN. I must admit I have not been at work. I have been on leave, contemplating retirement. [Laughter.]

Senator PRYOR. You have been hiding from your manager, I know.

Mr. BROWN. Hiding from my manager. [Laughter.]

But when the Commissioner makes a statement like that, I wonder if he is saying that before we have not been treating them like customers?

Senator PRYOR. That is a good point. I have not thought of that twist to it.

Mr. BROWN. You see, I don't know. When he makes a statement like that, that is the first thing that comes to my mind. My only suggestion would be, in directives coming from the national office, that there should be a way in which he can monitor his directives, not asking down through the ranks if this is being done, but maybe sending someone to me or someone who deals directly with the public and asking me—without going through the chain of command—if this is being implemented.

Senator PRYOR. Mr. Brown, is this the manual for the revenue officers?

Mr. BROWN. That is correct.

Senator PRYOR. We refer to the manual all the time; you say it is your bible.

Mr. BROWN. Our bible. That is what I classify it as.

Senator PRYOR. Is the bible updated periodically.

Mr. BROWN. It is updated coming down through the system through a looseleaf type situation. You know, pages can be entered and withdrawn. So, when we get manual changes, in coming down through the administration, it may be on some secretary's desk who is, say, on leave for two weeks.

Senator PRYOR. Yes. So, there is not a very good system of dissemination of any changes?

Mr. BROWN. I don't think so, Senator. No.

Senator PRYOR. Mr. Miller.

Mr. MILLER. It is a good system of disseminating those changes, but as far as memos like this one you are talking about from the Commissioner, something like that does not come through—they must get lost somewhere along the way.

Senator PRYOR. Mr. Gibbs and I have become friends; we may not be after this meeting, but anyway. [Laughter.]

At any rate, I respect this man. But I know that Commissioners are only here for about two years, two and a half years, average. I told him one time: Mr. Gibbs, you and Mr. Gorbachev have the same problem in that you are fighting an entrenched bureaucracy and a sort of mindset or mentality. How do revenue officers out there in the field feel about a Revenue Commissioner here in Washington? Do they think what the Commissioner says is the law or is the policy? Or does the Congress set the policy? Who sets the real policy? Who has the final say as to what changes are going to take place in IRS? Ms. Garcia?

Ms. GARCIA. We know that they are coming from the national office. We hear them, or we will read them in the newspaper or something like that; but by the time that they get to us, we know that they are not coming from the Commissioner's office. We know for a fact that it is coming either from the region or from the collection branch chief.

Senator PRYOR. Then the policy that you abide by is that policy enunciated by your supervisor in the area of collections, seizures, and levies? Would that be correct?

Ms. GARCIA. That is correct.

Mr. BROWN. At that particular time.

Ms. GARCIA. At that time.

Senator PRYOR. At that particular time?

Ms. GARCIA. Yes.

Senator PRYOR. And that supervisor would pretty well be your policy guide.

Ms. GARCIA. That is correct.

Senator PRYOR. That is, his word would be the holy word or the script that you had to go by?

Ms. GARCIA. That is correct.

Mr. BROWN. Particularly when it is time for your annual evaluation coming in, say, the next 30 days. [Laughter.]

Senator PRYOR. That is a good thought. Now, a final question. Have the three of you seized and levied and collected from good faith taxpayers where you thought in your own mind that they were abused by the tax system and the Internal Revenue Service? Do you feel that you have been a part of abusing some of the taxpayers?

Mr. MILLER. Unfortunately, at times, yes; but what I have tried to do is buffer it as much as I could, to make it a clear communication to the taxpayer that I was being ordered to do this; and if there is anything that I can do to make it easier for you, I will. That way, I can break the brunt of the emotional impact on the taxpayer. But going back to your previous question, if I may?

Senator PRYOR. Yes, sir.

Mr. MILLER. With regard to upper management, all of management, all of the people in the country, I think that most people

really want to do the right thing, but we live in such a large system that ultimately what the individual wants is not always carried out. For instance, the Commissioner says I would like this policy implemented. It doesn't get carried out. I think that ultimately in this country the solution to a lot of these problems that we have will be when the individual takes a more active role in improving himself or herself and in supporting the leaders of the country.

I know a lot of times in dealing with the IRS the employees are afraid to step forth, just like we are sitting here in this hearing today and we are trying to get into these problems and trying to do some good. I think Commissioner Gibbs wants to do good. I think a lot of managers want to do good.

Senator PRYOR. I agree with you.

Mr. MILLER. It is up to the individuals to step forward. I think a lot of problems in the country could be solved by individuals improving themselves; and there must be some way for us all to improve ourselves and to step forward and not be one of the 90 percent but be part of that 10 percent that is active and takes action to improve themselves and the system.

Senator PRYOR. Mr. Miller, we are about to hear in just a moment from two taxpayers who tried to do right and tried to show good faith. These taxpayers in fact told the IRS that they were behind on employment taxes and wanted to work out some agreement. And we are going to learn what happened to those two taxpayers. Are there any other comments? Ms. Garcia? Mr. Brown?

Ms. GARCIA. None.

Mr. BROWN. The only comment I have, Senator, is that managers have a lot of ways of getting their point across. For instance, these statistics——

Senator PRYOR. Yes.

Mr. BROWN. Now, really, we at the revenue offices don't need to know all these statistics in doing our job; but somehow, he passes these around and have us initial off that we have read them. Or at one time, there was a chart on our wall which, since I am the union representative at my building, I said it had to come down. It had how many seizure actions or what have you that you have done this week—like stars on a wall. Now, being a union representative, I took exception to that right away, and I am not the best person to take exceptions at all times. But I said: That has got to come down, Mr. So-and-so. So, okay, the next week it was down. But at group meetings, you know, these things are emphasized—this is what we have been doing, etcetera.

So, if we can the managers of the Service to come down and eliminate some of these subtle type situations when they are talking to their members at the group meetings, I think that would be helpful.

Senator PRYOR. Thank you, Mr. Brown.

Mr. BROWN. Thank you.

Senator PRYOR. Mr. Miller.

Mr. MILLER. I think, sir, if I may, some of the helpful suggestions I will try and bring out right now are, one, that we do away with all statistical gathering. On our daily reports, we have to write the

number of levies, the number of seizures, the amount of field time, etcetera.

If we do away with all the statistical gathering, it would be greatly helpful. The bottom line is that the country is interested in how much money is coming in, and I think the money will come in in we treat the taxpayers right because they will feel good about paying the money.

Second, I think if we removed the critical elements which come down from OPM by which the revenue officers are evaluated; I think the revenue officers should be evaluated on their meet-and-deal abilities and how service-oriented they really are. How much are they really thinking about the holistic objectives of doing well for the taxpayer and doing well for the country?

Third, I think that managers should be completely divorced, in a balance of power shift, from the revenue officers, and their decisions. The supervisory group manager position description does indicate that the manager is supposed to monitor the work flow; but instead, the group manager wants to get involved in every case and make decisions, make judgments, and others do as the cases get reviewed. So, if there was some way that you could think of of separating the manager from being able to approve work, from being constantly involved in those areas that don't concern that group manager as much as the revenue officer.

And various other things. Training, that you mentioned; the training should probably be done by an outside source. Bringing in the same people who are perpetrating the problems to train in new areas will only create another problem. More money for the IRS.

Senator PRYOR. What about more agents? 8,000 new personnel are being requested this year by the Commissioner. Are we justified in considering that?

Mr. MILLER. Sir, for years we have been told that our inventories are manageable. When we have 30 taxpayers, they are manageable. When we have 60, they are manageable. When we have 200, they are manageable. By keeping the inventories low through the hiring of more revenue officers and by continually keeping the pressures off the revenue officer, in that respect, as well as other respects, I think that you will find that the job will get done; and it will get done well. And the people in the country will be happy about what they see.

Senator PRYOR. Thank you, Mr. Miller. Ms. Garcia, did you have an additional comment?

Ms. GARCIA. You have already said what I wanted to say, and that was to get more bodies to help us out because we are really swamped. And I think that if we get the personnel, the staffing, that we need, we can get the job done, as well as telling management to back off.

Senator PRYOR. Should those new bodies go into the area of taxpayer services or go into collections or go into management or computer operations or what? Where should those bodies be?

Ms. GARCIA. We definitely don't need any more managers. Right now, we have more managers in our office than we have revenue officers. [Laughter.]

And I would say put the bodies right now in collections because we are really overworked.

Senator REID. Mr. Chairman?

Senator PRYOR. Yes, Senator Reid?

Senator REID. If I could just comment on this statement made by Ms. Garcia. She has spoken a real truth. What has happened the last several years is that we have had cuts in many of our Federal agencies, but the cuts have all come in the wrong places. We have cut the workers—I use that term as the people who go out and do the work—and not the managers. It is not only at the IRS; it is all through Government. We have been cutting the people who actually do the work and not the managers; so we are top-heavy throughout the entire Federal Government. So, what she said not only applies to the IRS but other agencies as well.

Senator PRYOR. This country owes a debt of gratitude to the three of you. Thank you very much.

We are going to call our next panel now. We are going to ask Mr. Danny Maestri and Mr. Allen Tucker to come forward.

We welcome both of you here today. You have both come from a long distance. Mr. Maestri has come from the great State of Arkansas, in the hills and the mountains of the Ozarks; and Mr. Tucker has come all the way from Colorado.

First, let me tell you if I might just a word about Mr. Maestri. For three generations, his family has operated Mary Maestri's Restaurant up in the mountains of Arkansas near Fayetteville, near the home of the University. Their restaurant is an institution in our State, and I believe since 1923 when it was started, members of the Maestri family have been the sole proprietors of this particular establishment. Today, Danny Maestri is going to come forward and tell us about what happened to him and to his business and maybe even to his family as a result of the Internal Revenue Service and as a result of his going forward and trying to work out an agreement with them because of back taxes. So, Danny Maestri, we appreciate your coming here today. We look forward to your statement.

Danny, I may be out of the room for about two minutes, but Senator Reid is going to preside, and I will be right back. I have read your statement, and we welcome you this morning.

## STATEMENT OF DANIEL MAESTRI, TAXPAYER, TONTITOWN, AR

Mr. MAESTRI. Thank you, Senator Pryor. I appreciate your asking me to come here to help today, and I really appreciate what is going on here. These people before us with their efforts to change a system that is not working and with the legislation that you are trying to pass.

However, your introduction makes me feel somewhat like I should be special, and I don't feel special. I feel like just an average taxpayer; and my situation is probably like a lot of other people. I came here thinking that I could tell my story and maybe help this problem be solved.

I got behind last year in our business on some payroll taxes. We have been in business, as you said, 64 years. We paid on our taxes on time for 63 years, I suppose; and I found that we were behind and went to the IRS to solve the problem. We had some financial problems.

Senator REID. You went to them? They didn't come to you?

Mr. MAESTRI. Yes, sir, with an accountant. I recall the meeting. I was naive, thinking that I was doing the right thing going to them, and hoping that they would work things out. He wasn't rude, but he wasn't exactly friendly either; he was just there. And he seemed like he was going to try to help us, but really all he was doing was setting me up for the kill. We gave him all the information. We did what he said. He told us to file all our reports and send them as much money as we could in the next few weeks. We did that, expecting to hear back from the agent as to what kind of a plan could be worked out.

Instead of that, we received notice that we had 10 days to come up with all the money, or they would seize assets or they would take legal action or whatever it is that they do.

Well, 10 days isn't very much time to raise a lot of money; $50,000 is a lot of money to a small business, especially one as small as ours. It would take a considerable length of time to arrange a loan with the bank for that amount of money, let alone work it out with the IRS. 10 days is really not long enough.

I was advised by expert counsel—a counsel that had dealt with IRS in our area—that if the money wasn't paid in 10 days, that they would close our business. So, that left me very little choice since I didn't have the money to file Chapter 11, which would prevent the IRS from closing our business. Thank goodness that there was somebody with foresight, that evidently this had happened before; so there is protection for people when they are up against the giant.

Seven months following this experience, we went through the Chapter 11 through the Federal court and were able to work out payments with all of our creditors. However, I would say that our creditors were somewhat unhappy that we filed Chapter 11. Banks are not very happy to have a customer file a Chapter 11 against them, and I didn't want to do it.

However, I didn't have any choice since I didn't have the money at that time. I would like to say that the IRS agent could have given us an opportunity to make payments, and we could have made those payments. Our business was ongoing. It wasn't as though we didn't have any business. We just got behind because of some high interest and some business losses.

We are in a very small town, population 600, a rural area. The weather affects our business. The rain affects our business. You know, everything affects our business. A miniseries on television affects our business. [Laughter.]

You know, if you get behind, you don't just immediately catch up. It is going to take some time. I would have liked to have had the opportunity to make payments to the Government. That is why I went to them and told them I owed them money, since they didn't know. And had they given me a chance to pay that back, and then I hadn't paid that back, and then they took action, then that would be what I would call a due process of law—something that I feel like I am entitled as a taxpayer and a citizen of this country.

However, I don't feel like I was given that chance. I was forced into a corner; and my nature tells me that, when I am in a corner, that I scrap. And that is exactly what I did. And from looking at

this memo that was passed around and all this material that I have in my folder and the stuff that comes from the IRS to the taxpayer or the one that goes to the employees, it hit me sitting out here that it is as though their motivation is fear. And fear is not a good motivator for people.

If they want the taxpayers to pay their taxes on time, then they should work with them and they should make them feel good about it, just as they should feel good about the country. I don't know anybody that feels good about the IRS.

Now, that has taken some work on their part to make everybody hate them. I feel that that could be changed if the Congressman and Senators can help in passing this legislation to solve this problem and would take notice of this and get it done; then we can go down the road, and this will only be a better place to live in.

I guess that is my statement.

Senator PRYOR. We are going to ask that your full statement, Mr. Maestri, be placed in the record. Senator Reid or Senator Grassley, do you have questions? I have a few, but you go ahead.

Senator REID. Mr. Chairman, with your permission, maybe we would hear from Mr. Tucker and then question them both at the same time. He did a very good job in your absence representing the State of Arkansas.

Senator PRYOR. Great. His family has been representing us well for a very long period of time. And by the way, I would like people to know—and I don't know if you mentioned this—your restaurant is still in operation.

Mr. MAESTRI. Yes, sir.

Senator PRYOR. And if anyone goes to the Ozark Mountains and they don't go to Mary Maestri's, it is an incomplete visit.

Mr. MAESTRI. That is true.

Senator PRYOR. And many people thought, after you took Chapter 11, that you would have to close up.

Mr. MAESTRI. Yes, sir. That is right.

Senator PRYOR. Our second witness on this panel is Mr. Allen Tucker. Mr. Tucker has a very similar story to that of Mr. Maestri. He is from Colorado, a small businessman attempting to follow the call of President Reagan for the private sector to help the homeless. Let's see what happened to Mr. Tucker when he decided to help the homeless in the State of Colorado. We welcome your statement, Mr. Tucker.

[The prepared written statement of Mr. Maestri follows:]

**Statement of Daniel Maestri**
**to the Senate Finance Subcommittee**
**on Private Retirement Plans**
**and Oversight of the Internal Revenue Service**

My name is Daniel Maestri. I own an Italian restaurant in Tontitown, Arkansas known as Mary Maestri's. This small business operation has been in my family since 1923. The restaurant was founded by my grandparents, Aldo and Mary Maestri, and, after my grandfather's death, was managed was managed by my father for twenty-five years. I have owned the restaurant for ten years since the death of my father.

Due to business losses and high interest rates, we got behind in our state sales taxes and federal withholding taxes in the latter part of 1985 and in early 1986. In the process of trying to solve the financial problems of the business, I sought professional and expert advice. Consultations with bankers, my C.P.A. and my attorney led to a possible solution. The solution was complex and would take some time to resolve the the financial problems. My accountant advised me that I should immediately contact the Internal Revenue Service regarding the delinquent withholding taxes and make arrangements for payment of those taxes plus penalty and interest in an installment agreement over over a reasonable period of time. The State of Arkansas had already agreed to installment payments for the delinquent sales tax.

Prior to my visit with the representatives of the I.R.S., there had been no correspondence from them concerning the delinquent withholding taxes. I fully realized my obligations to pay the delinquent taxes, and I was eager to work out a payment plan with the I.R.S. as a part of the overall plan to solve my financial difficulties.

On October 1, 1986, my accountant and I met with a field auditor for the I.R.S. in Fayetteville, Arkansas. We explained my financial situation and furnished general information regarding the delinquent taxes. The I.R.S. representative instructed us to prepare and file the delinquent withholding tax reports and said that he would check the computer in Memphis, Tennessee regarding the information in those records.

The next day, October 2, 1986, all delinquent reports were filed as instructed. On October 3, 1986, the revenue officer for the I.R.S. wrote a letter to my accountant stating that the delinquent taxes with penalty and interest totaled $54,636.61. The last paragraph of that letter stated that I should start sending money to the I.R.S. office so that some of these periods could be paid off and that I should send as much money as I could during the next two weeks. A copy of that letter will be submitted to the Subcommittee for the record.

Within just a few days of my receipt of the October 3, 1986 letter from the I.R.S., I forwarded a payment of $2,000.00 to the I.R.S. office. On October 20, 1986, my accountant received a note from the revenue officer, with a copy of the October 3, 1986 letter attached, stating that I must pay the entire balance of

taxes, penalty and interest, minus the $2,000.00 paid, by October 31, 1986 to avoid enforcement action. A copy of that note with the attached letter will be submitted for the record.

It was absolutely impossible for me to obtain funds for this payment within the ten-day period set forth in the note from the revenue officer. The revenue officer was aware of the fact that such payment was impossible until I had worked out the plan which was under consideration for refinancing and restructuring the debt of my business.

I was advised by my accountant and my attorney that the enforcement action by the I.R.S. would be seizure of my business assets and that this would result in the closing of my business. The results of such action by the I.R.S., in addition to the destruction of my business, would be that thirty-one employees would be out of work, all unsecured creditors would receive nothing on their debts, and all secured creditors would suffer considerable losses on their secured debts. On the other hand, any sort of a reasonable payment payment plan by the I.R.S. would have prevented these disastrous results.

I was advised by my accountant and my attorney that my only option to avoid the results of such enforcement action by the I.R.S. was to file a bankruptcy petition under Chapter 11 of the Bankruptcy Act.

This petition was filed in late October of 1986 and, of course, terminated all efforts to refinance and restructure my business debt. The principal secured creditor started foreclosure proceedings, and for the following seven months my

life and the lives of my family were totally consumed by the bankruptcy proceedings and efforts to manage a business which was under a bankruptcy petition. These proceedings naturally consumed a considerable amount of money for attorney fees, accountant fees, and related expenses. In May of 1987, our plan was finally confirmed under Chapter 11, and this plan included reasonable installment payments to be made to the I.R.S. for the delinquency owed.

It is my honest opinion that the Chapter 11 proceedings could have been avoided had the I.R.S. worked with us on an installment plan for payment of the delinquent taxes. Instead of this solution, I was placed in bankruptcy proceedings which could have possibly resulted in a Chapter 7 bankruptcy had the Chapter 11 plan not been confirmed. Such a result would have destroyed my business completely. I thank God for the people who worked with me over the last year and that I was able to physically and mentally get through this crisis.

I am fully aware that the I.R.S. must collect taxes. However, I am equally convinced that the I.R.S. should provide an opportunity to taxpayers in situations such as mine to make payment of delinquent obligations under a plan which is reasonable to both the I.R.S. and the taxpayer. In my situation, such a plan is now in place, but only after Chapter 11 proceedings.

I submit that the I.R.S. can fully meet its responsibilities without the use of unnecessary, unreasonable and abusive power,

and thus serve the people of this nation without destroying lives and businesses in the process.

I sincerely appreciate this opportunity to share this information with this Subcommittee.

**Internal Revenue Service** | **Department of the Treasury**

District
Director

William T Kalepka
Fayetteville, AR

RE: Maestri Co Inc.

Person to Contact: Steven V Sweeney
Telephone Number: 442-2374
Refer Reply to: 1218
Date: 10-3-86

Bill:

Here is a breakdown on what is due on the corp. account:

| | |
|---|---|
| 1st quarter 1986 | $ 2913.22 |
| 2nd quarter 1986 | $ 2643.63 |
| | 5556.85 |

The amount due on the sole prop.:

| | |
|---|---|
| 4th quarter 1985 | $ 19320.95 |
| 1st quarter 1986 | $ 15681.57 |
| 2nd quarter 1986 | $ 13541.44 |
| annual 940 1985 | $ 535.80 |
| | 49079.76 |
| | $ 54636.61 |

The above figure is on the assumption that none of the returns were filed. Have Mr. Maestri sign returns for the periods above and send them to me, I received the 2nd quarter returns for both businesses
This is the figure that is now due. This figure doesn't enclude anything, on either business, for the 3rd quarter. I have ordered information to see if any other periods have not been filed or paid, that would be on top of the figure above. The 3rd quarter will need to be filed and paid through me in Fayetteville, and as soon as I get information on possible other debt, I will let you know.

Have Mr. Maestri start sending in money to me, so I can begin to pay off some of these periods. He needs to send in as much as he can over the next couple weeks and get the 3rd quarter returns filed ASAP.

If you have any questions, call me at the number above.

Steven V Sweeney
Revenue Officer

/venue Service

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ite Use, $300

/eeney, Revenue Officer
/enue Service
ain, Room 210
374
e, AR 72701

Postage and Fees Paid
Department of the Treasury
554

William Nalepka
C/o Arthur Young
4210 N Fiberglass Road
Fayetteville, AR 72703

RECEIVED
OCT - 6 1986
ARTHUR YOUNG & CO.

**Internal Revenue Service**

700 West Capitol Ave.
Little Rock, Ark. 72201

Date:

10-20-86

Mr Malepka:

The amount on the attached letter is correct. I verified that all other returns were filed and paid. The balance, minus the $2000.00 I received, is now due. I must receive the third quarter returns and full pay on all taxes due by 10-31-86 to avoid enforcement actic

If you have any questions, call me at the number below.

Steven W. Sweeney, Revenue Officer
Internal Revenue Service
35 E. Mountain, Room 210
Phone 442-2374
Fayetteville, AR 72701

Steven W. Sweeney

Revenue Officer

Form 5260 (6-74)

Department of the Treasury

**Internal Revenue Service** Department of the Treasury

District
Director

William T Malepka
Fayetteville, AR

RE: Maestri Co Inc.

Person to Contact: Steven T Sweeney
Telephone Number: 442-2374
Refer Reply to: 1218
Date: 10-3-06

Oct. 31st

Bill:

Here is a breakdown on what is due on the corp. account:

| | |
|---|---|
| 1st quarter 1986 | $ 2913.22 |
| 2nd quarter 1986 | $ 2643.63 |
| | 5556.85 |

The amount due on the sole prop.:

| | |
|---|---|
| 4th quarter 1985 | $ 19320.95 |
| 1st quarter 1986 | $ 15201.57 |
| 2nd quarter 1986 | $ 13511.44 |
| annual 940 1985 | $ 535.80 |
| | 49079.76 |
| | $ 54636.61 |

5,000 - 6,000 ?

Keep money for 3rd quarter

The above figure is on the assumption that none of the returns were filed. Have Mr. Maestri sign returns for the periods above and send them to me, I received the 2nd quarter returns for both businesses
This is the figure that is now due. This figure doesn't enclude anything on either business, for the 3rd quarter. I have ordered information to see if any other periods have not been filed or paid, that would be on top of the figure above. The 3rd quarter will need to be filed and paid through me in Fayetteville, and as soon as I get information on possible other debt, I will let you know.

Have Mr. Maestri start sending in money to me, so I can begin to pay off some of these periods. We need to send in as much as he can over the next couple weeks and get the 3rd quarter returns filed ASAP.

If you have any questions, call me at the number above.

Steven T Sweeney
Revenue Officer

## STATEMENT OF ALAN F. TUCKER, TAXPAYER, DENVER, CO

Mr. TUCKER. Thank you, Mr. Pryor. I would like to especially thank you for this opportunity to testify concerning my treatment at the hands of the Internal Revenue Service during these last few months. It is my understanding that each of you has a copy of the detailed statement that I previously submitted. So, I will just try and summarize these events and their effects on my family.

I founded a company, Petra Group, Ltd., which was dedicated to bring about true development to the poor community in the inner City of Denver. It was started as a response, as you mentioned, to the call of President Reagan for the private sector to take some responsibility for working out social needs of our country. It was also formed as an expression of my wife's and my Christian faith.

In December of 1986, an accountant discovered that my company last year had failed to make timely deposits of the FICA and withholding taxes. While I knew we were incurring a liability for these taxes, I was unaware that they were due and thought that they would be due at the end of the year.

Upon this discovery and his advice, I wrote the IRS a note, stating that we had a problem and wanted to bring it to their attention, and could they have a local agent contact me about it. At their convenience, we met for the first time on February 20, 1987. This, by the way, was my first meeting ever with the Internal Revenue Service in all my years of business. That meeting was the beginning of a series of nightmarish events which are still unfolding.

I provided the Internal Revenue Service with information they requested and immediately, within two hours of that first meeting, they began a series of levies, liens, and seizures which have shut my company down and kept us from paying those very taxes they claim are due. In fact, they have seized over one and a quarter million dollars worth of real estate from us in order to collect this approximately $30,000 tax bill. We have offered on several occasions, formally as well as informally, plans which would lead to the prompt payment of those taxes.

The IRS has now added over $11,000 in penalties and interest, and the clock is still running. The IRS has consistently, from the first meeting, refused to work with us to allow us to borrow the money, to make partial payments from the sale of our properties, or to work out any type of payment plan whatsoever. I have had the agents lie, deceive, and mislead me. They refuse to confirm their requests, demands, or threats in writing other than in preprinted forms.

They refuse to allow me to take recorders into meetings with them. The agents have told me that they are primarily interested in gaining our assets, that is to force us out of business, and secondarily, to collect the taxes.

Agent Joseph Martinez, at my first meeting, said: I don't make threats; I make promises. He proceeded to say that he would close my business down in 10 days if I didn't pay the tax. He didn't wait until the next day. An agent told me that if I had waited to file the tax and pay the tax at the same time, whenever that was, that probably would have been the end of it.

So, the concerns I bring to you as members of Congress are as follows. One: Is it appropriate and just to take away due process from a taxpayer—quote, unquote—and leave them intact for a murderer? Two: I have heard that taxes are hard to collect, so we need to give lots of authority to those who collect them. I would ask: Aren't the real issues why are taxes in the United States so hard to collect? Are the taxes bearing too heavily upon the people? Shouldn't they be reduced to reasonable levels? Are we headed to a Washington Tea Party?

Number three: When you delegate authority to unreasonable and dishonest people, who then should take responsibility for that power and their abuse of it? Number four: Does it make any sense to put a company out of business, which is multiplying tax dollars for the benefit of the community, rather than perhaps spending hundreds of thousands of dollars—as in my case—to "collect taxes"?

Number five: Does it make any sense to put a company out of business rather than work out some plan which will not only collect the tax due, but will facilitate more taxes being paid and a better community built for all?

And six: Why is it so expensive in attorney's and accounting fees for the small businessman to get the same treatment as a large business by the IRS? Seven: How is it that as a taxpayer property can be seized without notice or demand or any hearing at all?

Number eight: Why is the Tax Code so discriminating against real estate developers and small business persons? Number nine, and finally: Giving the IRS the power to charge over 192 percent in interest and penalties is sophisticated larceny.

The IRS spokespersons have lied concerning my case to the media. So, I expect they will be willing to lie to this committee as well. They would have you take their word against my word, or other taxpayers, such as Danny next to me.

I hope you and your colleagues will not be sidetracked by their attempt to discredit witnesses or to say we are the "exceptional" case. I personally received over four dozen calls and letters from other abused taxpayers from the Denver District, and some of them have been treated even worse than myself. As I spoke to the media about my case with the IRS, they just tightened the screws on me.

I wrote President Reagan about this abuse, and he forwarded my letter to the Internal Revenue Service.

The point is that there is no excuse for the collection system we have nor for the agents and managers who work for goals and objectives which are contrary to a free republic.

In conclusion, my family, my income, and my reputation have been devastated. I have little to look forward to over the next several years, except one battle after another, trying to work this out.

I am being abused by my own country that I have respected and loved. And I hope you will consider my testimony as you reflect on The Taxpayer's Bill of Rights. Please move quickly to stop this threat to our democracy, or I am certain that there will be a revolt in response to this kind of abuse. Thank you.

Senator PRYOR. Mr. Tucker, you have done a great service today by coming before this committee and telling that story, and we applaud you. Are you an attorney, by chance?

Mr. TUCKER. No.

Senator PRYOR. We applaud you for that, too. [Laughter.]

Anyway, I am one, so I can say that. Attorneys subscribe to a publication by Prentice Hall, and one recent edition has a section to attorneys on how to prepare your client and how to prepare a case involving the Internal Revenue Service. Let me read you Section 341. This is the so-called bible for tax attorneys. This Section 341, written to attorneys and written for attorneys, in their representation of their client with IRS. Listen to this.

Collection powers of IRS. During the examination stage of a tax dispute, the taxpayer has many rights. When the issue reaches the Collection Division, however, the taxpayer has virtually no rights.

Do you agree with that?

Mr. TUCKER. I never got in the examination stage. I mean, I went directly from writing them a letter saying I owed the tax to the collection stage, which meant I had no rights at all ever. I never had any communication with the IRS until—the phone calls preceding that first meeting.

Senator PRYOR. Is it true in your case that while you were in negotiation with IRS about an agreement or an installment plan, they were at that moment seizing your bank account? Would you go into that just a little bit more?

Mr. TUCKER. As I mentioned, the first meeting I had ever with the IRS was on a Friday; and I left that meeting frustrated as they had presented me with three pieces of paper, one of which was a blank form to agree to a 100 percent penalty. And I left the meeting believing that I had 10 days, which I thought was far insufficient but would try everything else to solve our problem in any case.

When I arrived at my office Monday morning, I had a letter from my bank that said that the Internal Revenue Service had gone over there Friday afternoon, within just a couple of hours after my meeting; and they had already seized our bank accounts and begun those levy and seizure actions—literally just as I left the office.

Senator PRYOR. The Taxpayer's Bill of Rights would relate to your situation in several areas. First, if The Taxpayer's Bill of Rights had been in force, you could have exercised the right to tape record or videotape any and all oral discussions with the Internal Revenue Service agents.

Mr. TUCKER. I would have loved to have had that.

Senator PRYOR. Second, you would have had the right to have honored by the I.R.S. any power of attorney given by you to your accountant or your attorney. Third, a 30-day notice, rather than the present 10 day notice, would have been given you before all of this started. I think, frankly, in your case the IRS proceeded illegally and certainly abusively, in going after whatever assets you had.

I also want to ask you, Mr. Tucker, when did you announce that you were coming to this hearing?

Mr. TUCKER. I think probably about a week ago or maybe a week and a half ago, when I found out.

Senator PRYOR. And what happened about an airline allegedly calling you on Saturday? Would you relate that to us? I want Senator Grassley to hear this also because I think it is very pertinent.

Mr. TUCKER. It just so happened this time that we made our plane reservations ourselves and bought our ticket from an airline agent, not a travel agent. And so, the only people who knew our exact flight plans or even the day or time of day that we were leaving were the airline itself and ourselves. And I got a call at 6:00 on Saturday morning, when we were to catch our flight at mid-day on Saturday, that our flights had been cancelled. In addition, we had even made back-up reservations on a second airline, and that call was also made—I got another call 10 minutes later saying that flight had also been cancelled.

Senator PRYOR. Did they say that they represented the airline?

Mr. TUCKER. Yes, both of them said that.

Senator PRYOR. What airline, by the way, was that?

Mr. TUCKER. American is the airline that we had intended to fly out on, and Continental was the other one.

Senator PRYOR. Did you think it was the airlines calling?

Mr. TUCKER. Oh, yes. They knew our flight numbers, our times, and everything. I thought the call sounded suspicious to me, and I have been quite suspicious lately; and I went to the airport immediately at 7:00 in the morning and intended to have my ticket transferred to another airline and just have it validated by the other airline. When I got there, they claimed they had never heard of my call; the flight had not been cancelled; and there was no way anybody other than the airline itself could have had that information.

Senator PRYOR. There is someone out there who is not very excited about your coming to Washington, I think.

Mr. TUCKER. I believe that is true.

Senator PRYOR. That is what I conclude. By the way, you have a wonderful statement. We are going to ask that the full statement be placed in the record, Mr. Tucker. It is a great statement.

Did the IRS revenue officer that you dealt with in this process tell you that, because you were a small business person who employed a goodly number of people, that they were going to try to help you work through this tax difficulty or this dispute? Did they tell you that?

Mr. TUCKER. Specifically, the first phone call I personally had with the agent, Joseph Martinez, he said, on his own—he volunteered on his own: We are not concerned about collecting this tax money at this point in time. We are mainly concerned about getting the forms filed, etcetera.

And then, at the very first meeting, it was like he had undergone some kind of brain operation. He was curt and rude and would not discuss anything more with me until I had filled out those three blank pieces of paper.

Senator PRYOR. In light of the testimony of the revenue officers, I think that brain operation can be attributed to his manager or his supervisor.

Mr. TUCKER. It sounds like it.

Senator PRYOR. Now, what was the next step? Did he try to help you and work out some installment agreement. Did he attempt to do this?

Mr. TUCKER. In the first meeting, he had asked me to fill out to the best of my ability—given that we were not in my office with our books available—a business financial statement, which I gave to him at the very first meeting before we even discussed anything else. He took that lengthy form and just glanced through it, put it back down, and said: Now, Mr. Tucker, I need to let you know that you have 10 days to pay this tax. And that was his initial response to what I believed was a sit-down meeting that was going to lead to some sort of a payment plan.

In fact, I presented at that meeting how we would be able to pay the tax within 45 days, etcetera.

Senator PRYOR. Have you ever had any other disputes with the Internal Revenue Service?

Mr. TUCKER. No, sir.

Senator PRYOR. I understand that this Friday the IRS has an auction or something like that scheduled. Would you tell us about that?

Mr. TUCKER. Later on in this process, they presented me with the choice of either giving them a detailed financial statement or they would put our properties up for auction immediately. What they do is they have the right to put up at private auction, with 10 days notice on their bulletin board and apparently one newspaper of their choice, to put up your properties for sale. They gave me until next Friday, the 26th, to pay the tax and penalties from sources of funds outside the company; or they will put the properties up for auction.

Senator PRYOR. Now, are the properties going to be auctioned off this Friday?

Mr. TUCKER. No, it is my understanding they have to begin the 10 day notice.

Senator PRYOR. I understand.

Mr. TUCKER. The hard part about that is that these are inner city redeveloped properties, and we will not likely get our market value out of them under that kind of scenario.

Senator PRYOR. Since your difficulties to the IRS have been exposed and publicized, you, along with Mr. Maestri, probably have had other taxpayers come to you with their problems with the Internal Revenue Service. I have that on a daily basis, I think. Even at the Little Rock Airport yesterday morning, one of the security people working there checking luggage told me about his problems with the IRS.

Have you heard a lot of taxpayers say that they share your concern or have had similar problems?

Mr. TUCKER. Oh, yes. As I mentioned, I have had over four dozen calls and letters myself. I have had four or five, where a man talking to me over the phone about a situation, has just broken down in tears telling it again.

Senator PRYOR. What about a call or contact with a physical therapist? Would you relate that to us?

Mr. TUCKER. I mentioned to your aide that one of the most distressing ones that I have had personally was a physical therapist

who had been in business over 25 years and had apparently gotten into a tax situation with the IRS to the extent that they contacted him with one piece of paper and said: We have a disagreement about how much your withholding tax is for the last quarter, or something along those lines. And his CPA detailed out exactly how it was arrived at and showed to the IRS that there was no additional tax due.

He entrusted that to the CPA, and on April 1st, I believe it was—of this year—the IRS came into his office, changed the locks on his office, pushed his employees out of the office and told him that he was shut down.

In fact, the agent that did that told him: I really believe that you do not owe this tax, but this is my job and this is what I have to do. So, he then on April 15th auctioned off this man's property that he did his therapy business with, and it was $110,000 worth of property that they auctioned for $10,000; and they put this man out of business after 25 years.

Senator PRYOR. Could you have worked out your problems with the Internal Revenue Service and still kept your small business alive and going, employing people and paying taxes?

Mr. TUCKER. I am convinced that we could. We offered to give them a first mortgage on a piece of property that had income. We offered all kinds of things that we thought were well secured, especially with the amount of real estate that we hold; but they refused to lift the liens, which would have freed us up to borrow the money or to sell some of the property off. We had three contracts in place that we lost. I really believe we could have worked it out.

[The prepared written statement of Mr. Tucker follows:]

**Statement of Alan Tucker**
**to the Senate Finance Subcommittee**
**on Private Retirement Plans**
**and Oversight of the Internal Revenue Service**

My name is Alan F. Tucker and I would like to thank you for the opportunity to testify today concerning my treatment at the hands of the Internal Revenue Service during the last few months. I am thirty-five years old, married with three small children and currently live in Denver. I am president and my wife is secretary of Petra Group, Ltd. I own all shares in this Colorado corporation.

Petra Group, Ltd. was incorporated in December of 1985. It was started as a response to President Reagan's call for the private sector to meet some of the social needs of our community and as an expression of our faith as Christians following Biblical imperatives.

Petra Group primarily redevelops delapidated housing in the poorest part of the inner city of Denver known as the 5-Points and City Park West neighborhoods. We have attempted to train unskilled laborers to increase their pay and to work with chronically unemployed. We buy boarded-up buildings and rebuild them into quality living quarters. We attempt to displace no one and to encourage ownership by people in the neigborhood.

Petra Group's problem with the I.R.S. involves F.I.C.A. and withholding taxes from 1986. This is the first business I have owned, so to assist me in starting the company we invested in the services of a large legal firm and a large national accounting firm. I concentrated on developing the business, buying property, construction management, and operating the day-to-day activities.

During 1986 the payroll was issued by a computer service firm recommended by the accounting firm. As payrolls were paid we kept an accounting of taxes due. Somehow I was not made aware that there was a requirement to make frequent deposits for the withholding and F.I.C.A. taxes. I was under the impression that while we were incurring a liability for those taxes, they were not due until the end of the tax year.

In late November and early December of 1986, a C.P.A. volunteered to help simplify and organize our books. During that process, he discovered that we had failed to with file the 940 and 941 forms and failed make the required deposits with the I.R.S. When he brought this to my attention, I wrote the I.R.S. a note in December 1986 indicating we had a tax problem and asked for a local agent to contact us.

We had no response from the I.R.S. until late January and that is when our living nightmare began. An I.R.S. collection agent, Joseph Martinez, left a note on our office door to contact him. I called him back and he indicated he "was not concerned about collecting the tax at this point, but wanted the

appropriate forms filed and wanted to get some info [illegible] about the company." He indicated where we could obtain the 940 and 941 forms and said he would be in touch to get the forms returned to him when they were complete. He was casual and did not indicate any time pressure or other concern at that time.

We filled out the forms and delivered them to his office. He then set up a meeting time at his convenience on February 20, 1987. We had received no written notice of tax due or demand for payment prior to that meeting. Martinez had indicated I should be prepared to fill out a summary type business financial statement at that first meeting. My C.P.A. was unable to attend that meeting as he was snowed in at his home in the mountains.

I walked into the I.R.S. office and Mr. Martinez said that I was to go into a small office and fill out three forms. He was curt and rude. I asked him what the forms were for and he said that he would not talk to me until they were filled out and then he walked away. The blank forms were a business financial statement, a personal financial statement and a blank form concerning agreement to a one hundred percent penalty assessment.

I explained to Mr. Martinez that I had been told by an attorney that a personal financial form wouldn't be relevant at this first meeting and that I should not be prepared to fill it out, but rather I should be prepared to indicate how the company would pay the tax. Further, the attorney had said the I.R.S. agent might try to get me to agree to a one hundred percent penalty and I should refuse. So I was not prepared to give a

personal statement and refused to agree to the one hundred percent penalty.

I called for Mr. Martinez to return and, upon his return, he glanced at the three forms and said that I would have only ten days to pay the $32,082.97 in taxes.

I was stunned. In the conversation that followed I explained that we were waiting for closings on our home sales to pay the taxes, that they had been delayed and were dependent on lender approval but should close soon. I further explained that we had very little cash and needed these sales or refinancing to pay the tax.

Martinez indicated that it was I.R.S. policy in "trust fund" cases not to accept any payment plans. He also said that he had the right to lien and seize our property and would do so if we didn't pay the entire tax within ten days. Martinez also said that there would be penalties and interest, but said he had not yet calculated what they would total.

At one point, Martinez said that he "didn't make threats, only promises" and he promised that he would close our company down.

It was clear to me that Martinez had no intention of evaluating the business financial form to determine the best way to collect the tax. He rejected out of hand any payment plan, and he understood that any collection action such as levys, liens, seizures and the like would jeopardize our ability to pay

the tax through refinancing or sale of property. He understood that our primary assets were real estate.

I clarified with Martinez that we had ten days to pay the tax and that nothing we said or did would make any difference to him. He indicated that I could wait to pick up a ten-day notice after he had it typed, but said it made no difference whether I waited or he mailed it.

As I had other business and it made no difference anyway, I left his office. But when I finally received the 10-day notice, I saw that it was mailed February 25 and dated February 19!

I came into my office Monday morning following the Friday meeting and opened my mail to find a letter from our bank notifying me that within two hours of my first meeting with the I.R.S., without notice or demand, Mr. Martinez had levied and taken the money from our bank accounts which included payroll and escrow accounts.

He had begun the collection efforts even before the 10-day verbal notice had expired and before we had any idea how much the penalty and interest calculations were.

Since then, a number of shocking activities have taken place. The I.R.S. has proceeded to lien all our properties, to seize two of the largest properties and to propose an assessment of over $23,000.00 against me personally. They call us and threaten to seize this or that property if we don't give them some additional information which they use against us.

I can appeal the penalties (nearly $9,000.00 corporately and over $23,000.00 personally) to the same persons who assessed the penalty originally. I've been told by attorneys that I cannot get a court order to stop the I.R.S. so I can reorganize the company and pay the tax. I must wait until all the damage has been done, then initiate an expensive and lengthy lawsuit (which I can't afford) against my own country.

From the beginning, it has been my "burden of proof." I am guilty until proven innocent, and the I.R.S. has been given the power to assess a tax and penalties at the agent's discretion without even needing his own supervisor's consent.

I've learned that the I.R.S. agent cannot be held responsible for any of his actions even if they're proven arbitrary, negligent or in any way wrong. The I.R.S. doesn't even have to follow their own policies. They can discriminate at will.

My family life has been devastated! Our reputation has been tainted by the publicity and the I.R.S. claims. Some friends have assumed that we must be guilty of all kinds of things, while other friends are frustrated by their inability to help.

We had poured everything into our work and its committment to the community. Now we have been without income for months and have used our meager savings up.

We are frequently receiving intimidating phone calls and forms from the I.R.S. The I.R.S. management has lied to the

media to make our case sound unique and thereby give the appearance that we are guilty of some crime.

I have received nearly four dozen calls and letters from others in this area who have had similar acts of abuse and intimidation and even physical threats from I.R.S. collection agents. Most of these people encourage me to let all know what is going on, but they themselves are too fearful to come forward to the media or the legislature. I went with documentation to the media because I feel we must shine some light on this darkness in our country.

The tactics used by the I.R.S. are on a level with the gestapo or the KGB. Their basic premise appears to be that taxpayers are criminals and must be treated harshly at every turn.

The media say that they hear stories like this frequently, but usually nothing is ever done by Congress, so they seldom report it. Many of the media people themselves are fearful of the I.R.S. and admit that fear affects their reporting to some degree.

I was shocked to discover that the I.R.S. has been given special exception so they don't afford the constitutional rights given to the cruelest of criminals.

If half the effort used to obtain $32,000.00 from me were used to prosecute the purveyors of illegal profits from drugs and crime, the treasury would be full.

The I.R.S. has come into my life and taken $1.2 million dollars in real estate, shut down a useful business, cut off payments to over one hundred contractors, cost the jobs of many taxpayers, cut off my personal income, and has positioned itself to take away my home -- all without me being given a hearing!

The foolishness of these acts can be partially described as follows. The I.R.S. in their efforts to "collect" $32,000.00 in taxes has:

1. Shut down a development company revitalizing city neighborhoods.
2. Eliminated many jobs during high unemployment.
3. Stopped a company that desires to pay taxes, from paying taxes now due, and from paying taxes in the future.
4. Put into jeopardy over $450,000.00 in federally funded-city administered loans for renovation of our blighted low-income areas.
5. Stopped payment of tens of thousands of dollars due to contractors, causing more hardship for small business.
6. Created tens of thousands of dollars in administrative and legal costs to the government to work through defaulted loans mentioned in #4 and to complete the renovation of those buildings.
7. Jeopardized even further the likelihood of private companies attempting to accept responsibility for social needs in our cities.

I request of you to take the responsibility for giving the I.R.S. these republic-threatening powers and remove these

discretionary and discriminating powers from I.R.S. agents and bring them back into the realm where taxpayers have the same rights as criminals!

Do not accept the public I.R.S. claim that cases like mine are unique and infrequent, for I assure you they are not. These I.R.S. agents are trained to intimidate, to deceive, to entrap citizens with full knowledge that they have been given the power of the United States government and its resources to bear down upon each taxpayer that an individual agent chooses!

Please take the responsibility to reward honesty, rather than using the honesty of people who file tax returns to extract some warped sense of job advancement tactics for eager I.R.S. agents and managers.

I've heard that tax collecting is difficult so the government must use strong tactics to collect taxes. Perhaps taxes would not be so difficult to collect if the people perceived the government was dealing in good faith rather than oppressing the citizens to benefit a few I.R.S. employees.

I close this statement with a plea. I believe that the actions which have set the rights of taxpayers apart from the rights of a criminal are as big a threat to our country's future as the infiltration of communism or the presence of organized crime in our country.

I hope for the first time in years our Congress will not weaken in their attempt to deal with the documented abuses by the I.R.S. and also will investigate the rumors of abuses. Do not be

sidetracked by claims that the source of complaints is not a valid source. Nothing excuses these gestapo activities! Our country for over 200 years has stood for the principle that the rights of the few must never be given away to "benefit" the masses.

Thank you for considering my testimony. I have much documentation and have left out many details that would be relevant to any further investigation.

Senator PRYOR. Mr. Maestri, when you first found your error, you took your problem to the IRS, and said: I have not been paying the proper amount of FICA withholding and other taxes. Did the I.R.S. adopt a cooperative attitude and begin working with you to keep your business going?

Mr. MAESTRI. I wouldn't say cooperative; I would say an unknown attitude. I had no idea what was fixing to happen. There was no verbal or suggestive help of any kind coming from them. I mean, that is what I went to them for, was to work with them. So, there was nothing until I got the letters that said: You owe it by this date or else. And that was it. It was pretty cold.

Senator PRYOR. Did they offer an installment agreement arrangement with you?

Mr. MAESTRI. No, never.

Senator PRYOR. Do you think, had they worked with you from the beginning and agreed to an installment pay-out system, that you would have had to file Chapter 11?

Mr. MAESTRI. If they would have worked out an installment?

Senator PRYOR. Yes.

Mr. MAESTRI. I don't think so. No.

Senator PRYOR. I mean, you would not have had to go into Chapter 11 had they worked with you on this?

Mr. MAESTRI. Right. That is right.

Senator PRYOR. Didn't you first offer to pay this out over *x* number of months?

Mr. MAESTRI. Right. He never would even talk to us about that. All he did was—We took him the forms to tell him how much we owed him, and then he had to check those in the computer to find out if we were right. And they did that. They told us to file all the reports and then sent notice to us to pay all the taxes which, really, I got 10 days warning. That is all that happened. I mean, it was just that cold.

Senator GRASSLEY. Mr. Chairman, it seems like this is a very key point. What is there in the bureaucracy that at a certain point in time somebody decides we are going to go in and seize everything and get nothing, or at least wait a long time to get something? And this puts some people out of business in the process, as opposed to working out a plan and having money come in and keeping businesses going and keeping them as taxpayers and hiring other people who are going to be taxpayers and not be on unemployment or relief and all those things that cost the taxpayers money.

It seems to me it is a very key problem that we have to deal with as members of Congress and you Senators specifically on this committee. What is there about that process? Can we isolate that in some way, or has it been done? Maybe you have done it already; I don't know.

Senator PRYOR. I don't think that we have done it. We are attempting to do that in this legislation. I don't know if we are adequately addressing that.

Mr. MAESTRI. I think, just from my brief experience with all this that it comes from two sides. One is the pressure from the above down through the ranks and the bureaucracy within. And then, the other side is—well, now, I have forgotten what I was going to say.

No wonder you can't isolate it; I can't even remember what it was. I am sorry; I apologize for that.

Senator PRYOR. No, not a bit. You will think about that in a minute.

Mr. MAESTRI. That is a good idea; I will think about it.

Senator PRYOR. Let me say that Mr. Maestri today made to one of our staff members a very, very acute observation. He said he got up and ate breakfast this morning in Washington and never had seen such an exorbitant bill for a breakfast. He said that if he at his restaurant charged what they charged him in Washington, he would not have had these problems with the IRS. [Laughter.]

Senator Pryor, Thank you, Danny.

Mr. MAESTRI. I remembered what it was, now that you said that. The freedom of power or the lack of control on the part of the IRS not being restricted—that is one problem. And the other problem is the pressure. So, here you get the guy with all this pressure and he is not restricted. If you gave that same power to a banker, can you imagine what would happen to this country? We would be in big trouble. We would all be in foreclosure. There would be no nothing. Everybody would just be taken over. Not that all bankers are bad, I don't mean that.

Senator PRYOR. What has the Chapter 11 done to your credit rating, by the way?

Mr. MAESTRI. I haven't really tried to borrow any money; I will put it that way. I don't really think that it has done me any good. However, it would be all right with me if I didn't have to borrow any money. So, we will see what happens.

Senator REID. Mr. Chairman?

Senator PRYOR. Yes?

Senator REID. I think the point that you have made and was recently made by Senator Grassley is really important. It reminds me of the days that I practiced law. I can think of a number of instances where I could not understand. I was not a tax attorney, but I had some clients who I did other things for that these problems came up. And I thought it was a lack of my knowledge of Internal Revenue laws.

I couldn't, for the life of me, understand why they would go in and close up these businesses and put people out of work and get nothing. By seizing—in my experience—most of the time they didn't get anything, anyway. And I just really don't understand, but I am beginning to understand more all the time. Here are two good examples.

Now, here is a family business that has been in existence for over 60 years. Here is a man who went to them and said: Hey, I am sorry we owe you some money. And rather than put them out of business, certainly there is an indication that this person is going to be around a while and work with them a little bit.

Now, it is a different situation with Mr. Tucker. It is a new business; and I assume if they could lop onto some cash there and they think his business is no good, that is a judgment call that they have the right to make. But using the background that we have been given for both these cases, and especially with Mr. Maestri, the fact is his family has been in this business for over 60 years.

And I think there should be some credit given to the fact that Mr. Tucker went to them. It wasn't as if he was trying to hide from them, didn't answer his phone calls, or didn't pick up the mail. This was brought to the attention of the Internal Revenue Service.

I am curious. You have a small restaurant, isn't that right? 30 employees?

Mr. MAESTRI. 30, yes. We seat 150 people.

Senator REID. That is not too small; that is a pretty good sized restaurant.

Mr. MAESTRI. We pull from a long ways off because it is so good. [Laughter.]

Senator REID. I am sure that is true. Boy, you talked about losing your trend of thought; I just did that. [Laughter.]

Senator REID. How much do you think that you spent in attorney's fees and accountant's fees after you learned that the IRS wasn't going to work with you in this regard?

Mr. MAESTRI. $20,000. To file Chapter 11, to go through it, to hold everything together——

Senator REID. $32,000 is what the debt was, or was that $54,000?

Mr. MAESTRI. Yes, but half of that is penalties and interest.

Senator REID. Yes. Half of it was penalties and interest?

Mr. MAESTRI. Right.

Senator REID. Mr. Chairman, that is incredible. Here is a man who owed $25,000 in taxes. He spent over $20,000 in accountant's and attorney's fees. This money he would have gladly given to the IRS; is that not right?

Mr. MAESTRI. Right. Actually, all of the unsecured creditors, the secured creditors—everybody involved in my particular situation—would have lost a lot of money, had we not done what we did.

Senator REID. How much money do you still owe the IRS as a result of this debt—the original $25,000 plus?

Mr. MAESTRI. It is still the same as what it was when we filed Chapter 11, plus accrued interest from that time.

Senator REID. Which is building up all the time. Are you making any headway on it?

Mr. MAESTRI. Right. We will make monthly payments on it for six years. The Chapter 11 put it in a six-year pay-out.

Senator REID. And now, you have to keep up with your current taxes?

Mr. MAESTRI. Right, but we can do that.

Senator REID. But it seems to me that it hasn't helped anybody. It hasn't helped the Federal Government. They have made no extra money on the deal.

Mr. MAESTRI. See, we could have ended up in bankruptcy real easy. Chapter 11 is not a piece of cake. It is like a roll of the dice, especially when your main creditor comes after you with his guns loaded because he is mad at you for filing Chapter 11.

Senator REID. And I think also you may not understand, Mr. Maestri, if you come from a place like Las Vegas or Reno, which are new towns basically, new businesses because the area is growing so rapidly. The creditors wouldn't have worked with a new business there; whereas you, these people have been doing business with your family for decades. And they say this family has been here for a long time; we are going to work with this guy.

Mr. MAESTRI. That is right.

Senator REID. And where I come from they wouldn't work with me. IRS literally drives people out of business; and it has a snowball effect because those people—these 31 people who work for you, they pay taxes; and if they are not working, they are not paying taxes. And the same with the business that Mr. Tucker set up. So, I think this points up some problems we talked about earlier. The problems exist.

We have to figure out a way to set better guidelines and to do a better job. I again throw out the wish to the IRS that they come in and work with us on this, or they are going to get something they may not really want. I think we need the IRS to come to your staff and say: Here is what I think would work better; let's see if this is going to meet the demands better. It isn't just three extremists in the Senate. We have 28 members of the United States Senate and over 70 House members saying something has got to be done.

Senator PRYOR. As Senator Levin said earlier, with the escalating percentage of the number of collections, seizures, and levies out there across the country by the IRS, ultimately we are going to see thousands and thousands of Danny Maestris who are going to take Chapter 11. The IRS isn't going to collect anything, or if they do, it will be in the out-years or the out-decades after the other creditors are satisfied.

So, I agree with Senator Reid that the IRS should come to us or we should go to them and recognize that we are really going to have a major problem collecting any money because everyone is going to take Chapter 11.

Mr. MAESTRI. Yes, they force you to.

Senator PRYOR. They forced you to; you had no option.

Senator REID. Mr. Chairman, you know, the point is that we don't have to go hat-in-hand to the IRS. We are going to come up with something; and my point is that it would seem to me that this vast bureaucracy and Mr. Gibbs, whom we both like, I think he had better get the troops together—the bureaucracy that he is just moving into—and say: These people up there are going to pass a law; we had better get one that will do a better job. Because of our experience in the area, maybe we could help them come up with a better law than they can do on their own.

Senator PRYOR. This is a classic case this morning of the commander losing control of the troops; and I would apply that to Mr. Gibbs and to many of the people in the IRS. I am sorry to have to say that. Mr. Tucker, I don't have any more questions.

Mr. TUCKER. Let me just add a couple of things. I don't know if you know, or if everyone knows, that in my case I found out that the individual collection agent has the power to place those liens and levies on your account or your property without any supervisory affirmation. In my case, we contacted his supervisor the following week and said: What is the deal? And he said: I don't know; I haven't gone over your case with Mr. Martinez. He then said: But what has happened to you is not outside our policy in any way, shape, or form; so, I don't see any problem with what he did.

The second thing that occurs to me is that they don't have a plan, since they have done this to me, they have acknowledged to me that they don't have any plan to get those taxes from me. I

mean, I presented them a plan and said that was how I could pay the taxes. They don't have a counterpart. They just simply say: Your plan is not acceptable.

Senator PRYOR. Senator Grassley or Senator Reid?

Senator GRASSLEY. No questions, Mr. Chairman.

Senator REID. No further questions.

Senator PRYOR. We want to thank both of you for coming forward this morning. We all owe you a debt of gratitude. Thank you very much, both of you.

Mr. MAESTRI. Thank you.

Mr. TUCKER. Thank you.

Senator PRYOR. We have as our final panel Mr. Robert M. Tobias, the National President of the National Treasury Employees Union. He will have accompanying him Mr. Robert B. Bates from the Wichita, Kansas IRS Office, who has been in collections for 22 years. We also have Mr. John Pepping, who is a Revenue Officer in the Los Angeles area. I believe he has 22 years——

Mr. PEPPING. 17 and a half.

Senator PRYOR. All right. All of these five officers today total up to about 100 years of service and experience, and we are most appreciative of your coming.

Mr. Tobias, I have read your full statement and it is an outstanding statement. I would like to ask you, if you would, to summarize that statement, and the full statement will be placed in the record. Mr. Tobias?

**STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION, WASHINGTON, DC, ACCOMPANIED BY ROBERT B. BATES, INTERNAL REVENUE SERVICE REVENUE OFFICER, WICHITA, KANSAS; AND JOHN PEPPING, INTERNAL REVENUE SERVICE REVENUE OFFICER, LOS ANGELES, CA**

Mr. TOBIAS. Thank you very much, Senator Pryor. On behalf of the men and women who administer our tax laws and collect the revenue of the Federal Government, I am pleased to appear before you today to present our union's views on S. 604, a bill to promote and protect taxpayers' rights.

As I am sure you know, IRS collects over 90 percent of the revenue raised by the Federal Government to provide for the common defense and general welfare. To achieve this goal within the framework of a free society, IRS must administer the tax laws fairly, impartially, efficiently, and with minimum intrusion into the private affairs of our citizens. The institution of our nation has evolved to achieve these objectives is the voluntary compliance system.

Voluntary compliance depends upon the willingness and ability of each citizen to voluntarily self-assess his own tax and pay it when due. This system is built upon each citizen's sense of civic duty and upon IRS' ability to provide efficient service and assistance to taxpayers in understanding laws, and lastly, upon enforcement actions.

IRS can and does make mistakes and, as NTEU has urged for a decade, its production-oriented management system is the source of most of its failures to treat taxpayers fairly. Production pressure

on revenue agents and revenue officers is driven by management's desire to achieve statistical goals for case closures, seizures, and other indicators of performance embodied in an annual plan imposed from the top.

This procedure places inordinate time pressure on IRS employees, prevents them from using their best judgment in arriving at fair settlements, and places undue stress on the number of cases worked rather than the quality of the results.

We are convinced that most, if not all, of the seemingly irrational IRS actions with regard to taxpayers—especially the unwarranted seizures and levies—are traceable directly to production pressure and the ethos of statistics worship fostered by IRS management.

IRS' management system is the reality underlying the problems this subcommittee is attempting to remedy. We believe that the diagnosis you made in your opening statement on the first day of these hearings, Mr. Chairman, with all due respect, will not really solve the problem. You said that IRS suffered from a bully mentality and relies on intimidation and arm-twisting to strike fear in the hearts of taxpayers. The employees of the Internal Revenue Service, as distinguished from its management, can do a good job and want to do a good job, but the system often prevents this from happening. The present management system is the problem and is well entrenched; and it is hard for individuals to depart from its dictates on their own and survive.

Leadership must come from the top to reform the system. During the past decade, management philosophies have changed. Throughout our society, management is learning that the key to success is not through rigid adherence to production goals but to employee involvement. NTEU believes that, with the proper determination on management's part to thoroughly overhaul the existing system, our union could contribute importantly to the development of effective new arrangements that would strengthen voluntary compliance, safeguard taxpayers' rights, and enhance employee morale and professionalism.

This subcommittee can make a profound contribution to both taxpayers' rights and a more efficient and effective IRS. We call on the subcommittee and Congress to initiate the long-overdue task of reforming IRS management along the lines we have outlined. We stand ready to work with the committee in fashioning a realistic action plan to this end.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you.

[The prepared written statement of Mr. Tobias follows:]

STATEMENT
OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

TO THE

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND
OVERSIGHT OF THE INTERNAL REVENUE SERVICE
COMMITTEE ON FINANCE
HON. DAVID PRYOR, CHAIRMAN

TAXPAYERS' BILL OF RIGHTS ACT

UNITED STATES SENATE
WASHINGTON, D.C.

JUNE 22, 1987

1730 K Street, N.W. • Suite 1101 • Washington, D.C. 20006 • (202) 785-4411

Mr. Chairman and Members of the Subcommittee:

I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 120,000 Federal workers, including virtually all employees of the Internal Revenue Service. I am accompanied by Patrick Smith, NTEU Director of Legislation.

On behalf of the men and women who administer our tax laws and collect the revenue of the Federal government, we are pleased to appear before you today to present our union's views on S. 604, a bill to promote and protect taxpayers' rights.

IRS collects over ninety percent of the revenue raised by the Federal government to provide for the common defense and general welfare. To achieve this goal within the framework of a free society, IRS must administer the tax laws fairly, impartially, efficiently, and with minimum intrusion into the private affairs of our citizens.

The institution our nation has evolved to achieve these objectives is the voluntary compliance system. Under this system, our citizens voluntarily self-assess and pay their taxes. This system is a cornerstone of our free society, and the envy of other nations. While no human institution

is perfect, and obviously our tax system can be improved, we strongly believe that, by and large, our voluntary compliance system strikes a proper balance between the needs of the Federal government to efficiently collect revenue, and the needs of our citizens for fair, impartial, and minimally-intrusive administration of the tax laws.

Last year, over 178 million returns were filed by individuals and businesses. Of this number, less than 2 percent of returns were examined by IRS. About 1.5 million taxpayers were audited, another million were contacted by mail to resolve discrepancies in their returns, 3.5 million notices of apparent underreporting of income or failure to file were sent, 2 million taxpayers were contacted for delinquency in paying taxes owed, and 1.5 million were contacted to obtain returns they had failed to file. A relatively small number of taxpayers, about 150,000, exercised their rights in Appeals and before the Tax Court. If you add all these, and make no allowance at all for double counting, you see that only 5.4 percent of taxpayers had some enforcement contact with IRS last year.

We do not believe this is an overly intrusive level of enforcement contact with the taxpaying population. As a matter of fact, we believe enforcement is being conducted with the minimum possible intrusiveness into the affairs of citizens at the present time.

Strengthened enforcement is required if we are to solve the problem of the $100 billion tax gap that exists between taxes legally owed and taxes paid. During the past decade, our voluntary compliance system had a brush with near-disaster, as the overall compliance rate fell from 92 to 82 percent. This was due in part to large-scale transgressions against tax equity by many of our citizens who participated in abusive tax shelters and phony schemes like fake ministries, excessive dependency claims, and the like. This led to a rising sense among taxpayers that cheating could be condoned because so many were cheating and getting away with it. This attitude, if not reversed, would have destroyed our voluntary compliance system.

Fortunately, Congress acted to remedy the situation, increasing penalties for underpaying taxes and filing frivolous returns, outlawing abusive tax shelters, and granting IRS additional enforcement resources. IRS and the Department of Justice took action against tax protesters and the ringleaders of schemes to foment tax evasion. The American people solidly backed these efforts. They recognize there is a price to be paid for the freedoms we enjoy.

Voluntary compliance depends upon the willingness and ability of each citizen to voluntarily self-assess his own tax and pay it when due. This system is built upon each



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citizen's sense of civic duty, upon IRS's ability to provide efficient service and assistance to taxpayers in understanding the tax laws, and lastly, upon enforcement actions.

The willingness of taxpayers to file tax returns, correctly assess their liability, and make timely payment is influenced by their perception that these actions will be required if not done voluntarily. Voluntary compliance depends to a significant degree on public confidence that IRS is able to identify non-compliance and will take corrective action.

Enforcement actions bear upon the small minority of taxpayers, about 5 percent, who fail to voluntarily comply with the tax laws. Enforcement actions do not arise from IRS' desire to collect revenue, but from the fact that many citizens choose not to comply, and some go to great lengths to avoid their civic obligation. In such cases, fairness to the vast majority of compliant taxpayers requires IRS to take action. As GAO has told Congress:

> "It is important to keep in mind that IRS' various compliance activities do no more than require citizens to pay those taxes that were properly due in the first place, and that in fact were so paid by most of their number. Effective compliance should not be viewed as representing a special burden to the public at large; rather it is aimed at ensuring that all share their fair burden."

We hope these brief remarks will serve to place in perspective the actions IRS employees take to ensure compliance. There is little doubt these compliance-related actions are the ones that give rise to the most vocal complaints against IRS, and the most vocal demands for strengthening taxpayers' rights. We agree that some of these demands have merit, and will address these in our specific comments on S. 604 that follow.

We do not condone discourteous behavior or unprofessional conduct on the part of IRS employees, but we believe that such occurrences are relatively few, and are certainly far fewer than the number of assaults, threats, and insults by irate and potentially dangerous taxpayers encountered by IRS employees in performing their duties.

Some recalcitrant taxpayers are completely uncooperative, and even dangerous, because they view enforcement action as a threat to their well-being and way of life. Members of Congress should keep this fact in mind in judging the accusations leveled by some citizens against IRS, ostensibly in the name of taxpayers' rights. Upon investigation, many of these accusations disclose little substance, and hardly provide an adequate foundation for substantial reform of the tax laws.

Production Pressure and Taxpayers' Rights

IRS can and does make mistakes and, as NTEU has urged for a decade, its production-oriented management system is the source of most of its failures to treat taxpayers fairly. Production pressure on revenue agents and revenue officers is driven by management's desire to achieve statistical goals for case closures, seizures, and other indicators of performance enbodied in an annual plan imposed from the top. This procedure places inordinate time pressure on IRS employees, prevents them from using their best judgement in arriving at fair settlements, and places undue stress on the number of cases worked rather than the quality of the results. We are convinced that most, if not all, of the seemingly irrational IRS actions with regard to taxpayers -- especially the unwarranted seizures and levies -- are traceable directly to production pressure and the ethos of statistics-worship fostered by IRS management.

Congress may enact new procedural safeguards for taxpayers, but this will not get at the root of the problem. As long as the production-driven management system remains in place, abuses will recur. The climate is exemplified by the following petition which the Los Angeles Collection Division's employees submitted to management a few years ago:

> "The Collection Division in the Los Angeles District of the Internal Revenue Service is unable to treat each taxpayer as an individual with unique problems and individual concerns. This is not because the employees do not want to do so, but because management will not allow it. The taxpayers of this District will feel increased pressure from the IRS in the future due to the fact that increased caseloads and low levels of employee morale and technical ability are forcing enforcement officers to look for the easy way to close a case and not the best way. This will result in the taxpayers in the Los Angeles District having businesses closed and bank accounts attached. The employees in the Los Angeles District want to treat the taxpayers as human beings but management will not allow it."

IRS' management system is the reality underlying the problems this Subcommittee is attempting to remedy. We believe that the diagnosis you made in your opening statement on the first day of these hearings, Mr. Chairman, is flawed and will lead to false solutions. You said then that IRS suffers from a bully mentality, and relies on intimidation and arm-twisting to strike fear in the hearts of taxpayers. Does the petition of the Los Angeles Collection Division's workers, which stresses the need to respect taxpayers' rights, sound like a document you'd expect from a gang of bullies? No one forced these employees to come forward to condemn management's practices leading to abuses of taxpayers' rights. They did so voluntarily, out of respect for those rights.

Nor is this an isolated example. As the Subcommittee knows, Senator Levin held hearings in 1980 which documented employee protests of production pressure and inordinate

emphasis on numbers of seizures. NTEU has continued to raise this issue at every Labor-Management Relations Conference with IRS, and in congressional testimony before both authorizing and appropriations committees each year for nearly a decade -- with little result.

The present management system is well-entrenched, and it's hard for individuals to depart from its dictates on their own and survive. Leadership must come from the top to reform the system, but it has to be more than a pious bow to "emphasize quality". The top-down production planning system has to be dismantled and replaced by a system in which employees participate in establishing realistic goals for their work units. These work unit plans should be consistent with resource levels allocated by regional offices. The individual work unit plans can then be aggregated into district, regional, and national plans.

During the past decade, management philosophies have changed. Throughout our society, management is learning that the key to success is not through rigid adherence to production goals, but through employee involvement. NTEU believes that, with the proper determination on management's part to thoroughly overhaul the existing system, our union could contribute importantly to the development of effective new arrantgements that would strengthen voluntary compliance, safeguard taxpayers' rights, and enhance

employee morale and professionalism.

This Subcommittee can make a profound contribution to both taxpayers' rights and a more efficient and effective IRS. We call on the Subcommittee and Congress to initiate the long-overdue task of reforming IRS management along the lines we have outlined. We stand ready to work with the Subcommittee in fashioning a realistic action plan to this end.

In the remainder of our statement, we would like to comment on specific issues raised by S. 604.

Burden of Proof

Section 16 of S. 604 requires IRS to bear the burden of proof in all proceedings with a taxpayer, both civil and criminal. This provision would radically alter the present balance between the rights of taxpayers and the government's need to efficiently collect revenue. It presents an open invitation to taxpayers not to cooperate with IRS, and would transform the voluntary compliance system into a largely adversarial relationship. The taxpayer possesses the information needed to properly assess his tax, for example, to support a claimed deduction or to verify unreported income. To permit him to present no more than a minimum amount of information would effectively require IRS to substantiate

its claims through third parties, a result that is totally unrealistic in auditing both individuals and corporations. It would require IRS to prove a negative. For example, IRS would have to prove that a taxpayer acquired income in excess of that stated on the return, and that the income was not spent on any of the deductions claimed. If IRS had to go to this length to prove a case, far more revenue agents would be needed to conduct audits and process unagreed returns. This provision would be unsound tax policy. We strongly oppose it and urge that it be stricken from the bill.

Procedural Rights During Interviews

Section 4 of the bill specifies several procedural rights to be accorded taxpayers during interviews in connection with the assessment of a deficiency. The taxpayer would be permitted to request that the interview be held at a time and place reasonable to both the taxpayer and the IRS employee. The taxpayer would be allowed to make a recording of the interview at his or her own expense. Prior to the interview, the IRS employee would have to inform the taxpayer: (1) that the taxpayer has a right to remain silent; (2) that any statement the taxpayer makes may be used against him; and (3) that the taxpayer has a right to the presence of an attorney, certified public accountant,

enrolled agent, or enrolled actuary. The taxpayer may waive these rights, but may suspend the interview and claim the right to consult an attorney, CPA, agent, or actuary at any time. Finally, the bill requires IRS to deal directly with the person, such as an attorney or accountant, holding a written power of attorney from the taxpayer.

NTEU objects to these provisions on grounds they would constitute unsound tax policy. First, giving equal weight to the convenience of the taxpayer and the convenience of the government in determining the time and place of meetings would pose administrative and safety problems. It would require revenue officers, revenue agents, and tax auditors to travel to the taxpayer's place of business at almost all times. This would require interviews currently conducted in the office to be conducted in the field. IRS would have to hire many more people to process returns, while not generating the efficiency associated with an office audit. Moreover, in certain situations office interviews are ordered to protect the safety of the IRS employee. This practice may not be possible under the bill. Finally, many taxpayers would use this provision to attempt to avoid meeting with IRS altogether.

Warning the taxpayer of his right to remain silent and of the other rights established by Section 4 would also be unsound tax policy. It would increase the cost of

collecting taxes significantly because: (1) it would transform a non-confrontational interview into a confrontation, (2) it would slow down significantly the collection of money, (3) cooperation would be reduced, (4) the system would become clogged, and (5) the warning connotes a criminal investigation when an IRS interview is civil in nature.

To require IRS to recognize any representative appointed by the taxpayer is unwise. Currently, a representative must meet certain minimum qualifications and we urge that this continue. Otherwise this section, as in the past, would allow tax protestors the right to appoint eight, ten, and even as many as sixteen people as a representative on one case. The proposed language would also prohibit IRS from interviewing the taxpayer directly. Normally, IRS interviews the taxpayer initially to get an idea of the business operation. To change this practice would inhibit the efficient operation of the Service.

Disclosure of Rights and Obligations of Taxpayers

NTEU has no objection to Section 2, which provides for distribution of a statement which sets forth taxpayer rights and obligations. It would obviously cost money to print the material as well as to distribute it and answer questions about it.

Office of Inspector General

NTEU opposes Section 3, which assigns to the Treasury Inspector General tasks already being performed by the General Accounting Office. Moreover, Section 5 of the bill gives GAO wide power to investigate. There is no need to have two investigating entities, especially when GAO has the background, expertise, and more importantly, the independence to conduct the kind of managerial audits envisioned by the law.

Investigations Into Beliefs or Associations

Section 8 of the bill establishes a criminal penalty of a fine of not more than $10,000, or imprisonment for not more than two years, or both, for any person who knowingly authorizes, requires, or conducts, in connection with any revenue law, any investigation into, or surveillance over, the beliefs or associations of any individual or organization; or who knowingly maintains any records containing information derived from such an investigation or surveillance. The only exception provided is for organized crime activities. The term "investigation" included any oral or written inquiry directed to any person.

NTEU objects to this provision, which would have a chilling effect on the lawful performance of their duties by

IRS employees. It is impossible to administer the tax laws without inquiring into the nature of the taxpayer's business, and frequently his associations. Such investigations may disclose information about the taxpayer's associations and beliefs that are germane to enforcement, such as those of pseudo-religious groups and tax protestors who conspire to foment schemes of tax evasion. Many tax protest organizations, including some which advocate and practice violence, have beliefs and associations which IRS must investigate to prevent employees being endangered. This provision would lead to protracted litigation and seriously impede IRS enforcement of the tax laws. It should be deleted.

Limitations on Class Audits

Section 15 limits the ability of IRS to audit taxpayers identified with respect to trade, business or profession. Such ability is essential in dealing with many abusive tax shelter and tax protestor schemes. In addition, under current practice, IRS may audit all dealers at a casino for tip income, all individuals in a city who purchased an automobile with cash in excess of $30,000, and so forth. The provision would require written notice to the entire class and would prohibit the imposition of penalty or interest if an amended return is filed. The section is, in

effect, tax amnesty for certain classes of individuals. NTEU believes such a provision is basically unfair, and would unnecessarily restrict IRS enforcement. It should be deleted from the bill.

Written Advice of Internal Revenue Service

Section 11 of the bill provides that tax, interest and penalties will be waived if written advice provided by IRS is erroneous "in response to a specific request by a taxpayer unless the deficiency resulted from a failure by the taxpayer to provide adequate or accurate information." If this provision is adopted, it will be extremely costly to the Federal government. Individuals will make many attempts to receive a favorable response from IRS. NTEU recommends, if this provision is retained, that taxpayers should be exempted from interest and penalties if erroneous advice is given, but not from the tax.

Taxpayer Assistance Orders

Section 12 creates authority for the Ombudsman to issue orders to IRS to cease and desist from certain actions. We have no objection to this provision so long as it only applies to the actions of the Collection Division. If the

provision granting the Ombudsman authority to issue an order concerning "any other provision of law which is specifically described by the Ombudsman in such order" were deleted, the entire section would be acceptable.

Administrative Appeal of Liens

Section 13 would allow an administrative appeal of the "imposition" of a lien. Under current law, there is no appeal when a lien arises. Liens are not "imposed" under current law. A Federal tax lien arises upon failure to pay, after notice and demand. At that time, it attaches to all property and rights to property of the taxpayer. If this section is intended to mean that the taxpayer can appeal the assessment of his liability, this could halt collection and cause the loss of billions in revenue, as well as millions to administer this provision. It would also give taxpayers time to secrete assets while they delayed. Assuming the provision refers to notice of the lien filed with state and county officials, this would also halt and jeopardize collection. NTEU believes that to allow such delay is unwarranted, because in 99 percent of the cases it is the taxpayer's admitted liability, stated on his own return, that is delinquent and subject to collection.

Minimum Sale Price

Section 14 is intended to preclude IRS from placing a levy on property if the expenses of the levy are greater than the value of either the property or the tax liability. NTEU believes this would be unwise tax policy because it would bar "no equity" seizures. These seizures are made when a business is continuing to increase its tax liability by failing to process trust fund monies. In effect, the entity is stealing from its employees in order to stay in business. NTEU believes IRS should continue to have the authority to make "no equity" seizures.

Installment Payments of Tax Liability

Section 10 of the bill basically provides for partial payment agreements with taxpayers whose tax liability does not exceed $20,000 and who have not been delinquent on any past installment payment of tax agreements. Interest would be charged at the statutory rate on all such agreements. NTEU has no objection to encouraging installment payment agreements, provided it applies to amounts less than $10,000 rather than $20,000. This would give relief to smaller taxpayers and allow for a sufficiently prompt payment schedule so as to pay off the debt. However, this section requires IRS to offer an installment agreement, even where

the taxpayer has sufficient ability to pay and such agreement is not necessary. This is poor tax administration. Further, the section does not distinguish between an income tax liability, where an installment agreement may be necessary, and an employment tax liability, where no such agreement should be permitted because the delinquency is for funds withheld from employee paychecks. It would be poor tax policy to allow employers to finance their businesses with funds taken from employee paychecks, while IRS is paid in installments for such employment taxes rather than the full amount due.

Basis for Evaluation of IRS Employees

Section 6 provides that the evaluation of all IRS personnel by their superiors shall not be based in any way on the sums collected from taxpayers resulting from audits or investigations in which IRS personnel participated. NTEU suports this provision.

Application of Regulatory Flexibility Act to IRS

Section 17 would apply the Regulatory Flexibility Act to all rules and regulations of the Treasury Department, including IRS. The Regulatory Flexibility Act requires that

all rules and regulations must be analyzed for their impact on small business. While NTEU has no objection to this provision, it does appear that one group of taxpayers receives a special advantage under this section.

Levy and Seizure

Sections 8 and 9 of the bill make several changes to levy and seizure procedures. These are as follows:

Subpart A. Would increase the time a taxpayer has to pay a levy from 10 days to 30 days. NTEU believes that giving additional time would be beneficial to most taxpayers, and supports this provision.

Subpart B. Would guarantee that a levy is released when a taxpayer has entered into an agreement for payment of the liability. This would be a positive change, since in some districts levies are not released even when part payment or installment agreements are made. The text should also be changed to read "salary, wages, and other income."

Subpart C. Would make all animals exempt from a levy. This means that prize-winning animals such as champion dogs and cats, are exempt. They are, however, a real source of income and should not be excluded.

Subpart C also raises the levy exemption from $1,500 to $10,000. This would exempt most automobiles and personal property from levy action. Persons who own no real property would be largely exempt from levy action. The exemptions are clearly too high, except for wages exempt from levy. Furnishings could be raised to $3,000, tools to $5,000, but no more. Further, it would be administratively impossible to determine which funds in, say, a bank account, were exempt. Therefore, compliance with such levies would diminish to near zero, and billions in revenue would be lost. This subpart needs to be revised to deal with these objections.

Another basic objection to this provision is that the large majority of levy actions are on trust fund (social security) accounts. Taxpayers who use social security monies withheld from employees' salaries should be subject to levy action in order to guarantee employee contributions to the Social Security System. NTEU recommends that the exemption be increased to $8,500 for individual tax liability and maintained at $1,500 if the matter concerns a trust fund account.

The provision also increases the exemption on salaries from $75 to $150, which is acceptable. It further provides that the principal residence of the taxpayer, motor vehicle

owned by the taxpayer as the primary means of transportation, and any tangible personal property used in a trade or business are exempt from levy. Exemption for principal residence is all right, but "any" motor vehicle could be a Rolls Royce. Again, there is no justification for this kind of exemption when it involves trust fund accounts, and NTEU would oppose it.

Subpart D. Would prohibit any levy on property where the amount of the levy exceeds the fair market value of the property. The only problem here is that some marginal businesses continue operating, further increasing their liability every day. While putting a person out of business is often undesirable, it may be necessary to ensure that trust fund accounts are paid. This section should be revised to allow this.

This subpart would also prohibit a levy on the day a summons is issued. NTEU feels there have been some serious abuses of this power and would agree with the provision in the bill.

Subpart E. This section permits release of levy for hardship, among other conditions. This could result in a dispute every time a levy is made, the taxpayer arguing that all funds and property are used for necessary living expenses. This would allow taxpayers to prefer other

creditors to IRS, and would result in a substantial reduction in collections.

It is not clear from the language of section 9, but it may be that a jeopardy assessment would be prohibited without prior administrative and judicial review. This would prohibit seizing money, particularly related to drug arrests, and is, as a result, bad tax policy. The individual will have made bond and left town before the IRS is able to seize the cash. The language of section 9 dealing with jeopardy levies and assessments should be clarified to eliminate any prior restraint on these actions.

Mr. Chairman, this concludes my statement. My staff and I will be glad to answer any questions.

Senator PRYOR. Mr. Bates?

Mr. BATES. Thank you, Senator. I have been a Federal employee for 26 years, and for 22 of those years, with the Internal Revenue Service. I have been a large case Senior Revenue Officer for the last 16 years with a three and a half year interlude as an IRS Collection Manager. I have also been a union officer with the National Treasury Employees Union for the last 10 years.

So, I think I have had a chance to look at some of the problems in the Internal Revenue Service from at least three perspectives: as an IRS manager for three and a half years, as a long-term revenue officer, and as an employee.

Senator PRYOR. Mr. Bates, thank you, and we appreciate your coming. We also appreciate Mr. Pepping coming, and we look forward to hearing your statement, Mr. Pepping.

Mr. PEPPING. Yes, sir. I did want to clarify just briefly, if I could, that I was an employee of the Los Angeles District. However, back in 1983, California went through a redistricting because of the large number of population and split into five districts; and I have worked since 1983 in the Laguna-Nagelle District, which covers most of the counties south of Los Angeles.

I started my career in 1970 as a revenue officer, and I believe it is completely accurate to state that it has always been a production-driven system, as far as the enforcement duties of the revenue officers. I recall coming to work, and at that time, my first day out of training I was handed a completely made-up seizure kit with all of the documents already typed for me to go out and to close down a bar in the Southern California area. The policy at the time was that, if you did not close down a business, trust fund, taxpayers, you had to account to the group manager within 24 hours for not doing so.

The one thing, though, that I have seen change over the years is that we have gone into a more diversified type of production-driven system. And by that I mean that, if we get away from seizures because of certain pressures—whether it be from Congress or the regional commissioner or whoever for a period of time—we then start addressing other priority programs such as we now want to make sure we don't have any overage cases; and that is defined as a case which has been in the field over 12 months.

If that is not the priority of the week, which it sometimes gets down to, we then have programs such as we don't want to have any cases over $25,000 in the field over X amount of days. And finally, I think the latest program, which we heard a little bit on from the previous revenue officers, is this quality program. At least in the district I come from, I can translate that quality means how many dollars you are bringing in every week. Quality means yield, and it is sometimes subtlely discussed, such as signs hanging up in revenue officer manager's offices which say "Seizure fever; catch it."

Senator PRYOR. What does it say?

Mr. PEPPING. It says: "Seizure fever; catch it."

Senator PRYOR. You mean that is on a sign in your office?

Mr. PEPPING. That is in the group manager's office, hanging out so the employees can see it when they come into work every day.

Senator PRYOR. Seizure fever; catch it. We are learning a lot this morning, Mr. Pepping. Thank you. [Laughter.]

Mr. PEPPING. All right. As far as yield goes, it is not uncommon in particular offices in the district for the employees to get a competitive spirit going; and in fact, we have one such office which rewards the most successful group of employees on a weekly basis who have collected the most money by granting them an hour of administrative leave at the end of the week so they can go off and, I suppose, celebrate.

Senator PRYOR. Is that throughout the United States, do you think, or just in your particular area?

Mr. PEPPING. I really have no idea whether it is prevalent outside the district.

Senator PRYOR. So, the more money they collect or the more seizures they make, they give them an hour off?

Mr. PEPPING. They receive an hour of administrative leave for bringing in the most money; and of course, there is a variety of ways to bring in money, whether it is contacting taxpayers who volunteer to pay or not.

Senator PRYOR. Weekly competition?

Mr. PEPPING. Yes. Yes.

Senator PRYOR. And what region is that?

Mr. PEPPING. It is the Western Region.

Senator PRYOR. The State of California?

Mr. PEPPING. It covers the State of California. The Western Region also covers some of our other Western States, I believe.

Senator PRYOR. Thank you.

Mr. PEPPING. The only final comments I would like to make in the opening is that the effects that this have on the revenue officers. When you change from one priority to another and then, two weeks later, you are told that last month's priority is not this month's priority, you basically catch the revenue officers in a position where they can't win.

They get second-guessed on evaluations because, while they were doing program A, the manager became aware that his merit pay or her merit pay called for program B. And I just think it is interesting to note that not a whole lot of revenue officers, in my experience, ever make to their full retirement and go out on normal retirement. We have an awful lot of disability retirements, an awful lot of stress; and in fact, not too long ago, the IRS I believe commissioned a study on the stress in the revenue officer occupation, which was put together by a professor at California State University in Fullerton.

And probably the most damaging part of that report was its analysis and conclusion that the bulk of the stress which revenue officers feel on the job is generated by their supervisors, not by the taxpayers.

Senator PRYOR. Yes. Now, both of you came today from long distances away. Why did you come? You didn't have to come to this hearing.

Mr. PEPPING. No. In fact, I don't even enjoy the jet lag. [Laughter.]

But as a matter of fact, I have been a chief steward for the National Treasury Employees Union for the last four years, an officer

for the last 10 years, and as such, I felt that I did have a good handle on not only what was happening in my particular work area, my particular group; but as the representative of all of the employees, when they have problems and concerns with management, I felt that I could adequately address those concerns that I know are out there.

Senator PRYOR. We all thank both of you for coming. I am going to ask Mr. Bates a couple of questions, and then we will have some more questions coming from Senator Reid.

Now, Mr. Bates, let me ask you this question in your role as a former manager. How many agents were under your control?

Mr. BATES. Approximately 15.

Senator PRYOR. 15. Now, the manager receives a great deal of pressure from whom? Where would that pressure came from?

Mr. BATES. In my case, it was the division chief.

Senator PRYOR. The division chief brings pressure on the manager; the manager brings pressure on the revenue officers. Is that the way the system works?

Mr. BATES. That is right. Yes. The manager must implement the programs of his division chief.

Senator PRYOR. Mr. Bates, does the manager generally know what the national policy is of the Internal Revenue Service in Washington?

Mr. BATES. I would say not always, and that is probably one of the systemic problems. I have sat with Mr. Tobias and Mr. Pepping in national meetings and negotiations, and these are honorable people and intelligent people. And I believe when they talk about national philosophies, such as quality over quantity, I believe that is what they mean; but I think that these programs don't always filter down to the local level. And what happens is it runs through the bureaucracy from the national to the region; they interpret it; onto the district, who interprets it; onto the group manager, who is left to interpret it for his field men.

So, it passes through some layers.

Senator PRYOR. Mr. Bates, had you heard that Commissioner Gibbs had stated that the IRS policy is going to be to treat the taxpayer as a customer? Had you heard of that statement?

Mr. BATES. No, I haven't heard that one.

Senator PRYOR. He made that statement here, and I think several times; but that, evidently, has not filtered down. Tell me about this. Is it common in the IRS, that one hand does not know what the other hand is doing? Are we into that situation?

Mr. BATES. Yes, I would call that a big problem in the system as we have it today, and I can point to a valiant attempt—the new calling sites—the automated calling sites. What is happening today is many times the revenue officers—all of us get cases where liens have been filed or wages have been attached, and we don't even know about it when we get the case. I see that as a big problem.

I talked to a businessman recently who had a large tax bill that was in error. By the time it got to us, a lien had been filed by the calling site. Now, that lien was released quickly; but, however, that goes on Dunn and Bradstreet and gets recorded in financial newspapers in at least our area. So, there is some damage that can't be repaired easily in cases like that.

Senator PRYOR. I received a letter on just that point, Mr. Bates, about two weeks ago from a businessman and lawyer in the State of North Carolina, I believe. In his letter, he stated that he had been assessed, I think, $7,200 in back taxes by IRS. He had gone to them and they had worked it all out. He got everything satisfied. He didn't owe the tax to begin with. In fact, he got a letter of apology from the district revenue office of the Internal Revenue Service.

And about three weeks later, he received a call from his local courthouse saying that a lien had been filed on the record books for $7,200 plus penalties and interest.

Well, that does go down in Dunn and Bradstreet. That is reflected by the Better Business Bureau. It was, in fact, in his case picked up and published.

This goes on all the time. We find hundreds of cases like this. What can we do about this?

Mr. BATES. I think we have got to improve the system, and that would be very difficult from my perspective, to look above and try to figure out how to change the system. By the way, this didn't use to happen. I have been out of management for 10 years. So, this really wasn't that prevalent 10 years ago. I think it is caused by our attempts to collect the revenue faster and cheaper by the calling sites and computerization; but you know, we have got some problems. They are out there.

Senator PRYOR. Do you feel that a lot of taxpayers today are being abused by the Internal Revenue Service?

Mr. BATES. I think that is hard——

Senator PRYOR. Let's say unnecessarily abused.

Mr. BATES. Oh, yes, I think so. I think the nature of our job—our business—is that it is very hard not to make some taxpayers feel abused, even though they may not be. It is not an easy job to reach into somebody's pocketbook.

Senator PRYOR. None of you has an easy job.

Mr. BATES. Right.

Senator PRYOR. We are very, very aware of that on this committee.

Mr. BATES. Senator, I can answer that a little more specifically. I would say I have seen some abuses recently where the district, for whatever reason—and I suspect merit pay goals—have ordered cases closed for statistical purposes. And there is an abuse. We heard some taxpayers talk about it here. There are cases where pay agreements are voided, especially in business trust funds, to make a seizure for statistical purposes; and these are the things that we would point out and rail against, frankly. As the union, we are the employee's advocate. So, we feel as though we are a watchdog over the IRS also.

Senator PRYOR. Mr. Pepping, let me ask a couple of questions of you, and then I am going to yield to Senator Reid. Is the production pressure to close cases and to seize and levy growing?

Mr. PEPPING. I believe it is absolutely growing and mainly for one reason. Within the last four to five years, we had tremendously high inventories in the Western Region and Sunbelt States because of the population shift. It was not uncommon for revenue officers to be carrying inventories in excess of 300 to 400 taxpayers. I would

get to the point that you couldn't keep them in your desk drawer. You had to put them in lateral four-drawer file cabinets against the wall.

Now, the IRS—much to their eforts—have recently instituted a program where cases are prioritized and come out based on much like a score that you get an exam for those cases which have the highest chance of collection. And it has brought the inventories down.

But the down side of that is that management is now telling us that because you have these manageable inventories in the range of maybe 70 to 80, you can spend all of this extra quality time and do everything to the tenth degree; and in fact, that is where this idea that you heard earlier of the quality syndrome has taken over. I believe it is nothing more at this time than a disguise for getting in there and doing everything and anything, and that had better mean bringing in the dollars as soon as possible.

Senator PRYOR. Now, Mr. Pepping, we entered into our record earlier this morning a statement by the Commissioner of the Internal Revenue Service, Mr. Gibbs. He gave this statement in April. He said:

> In fact, we have a policy statement which states that tax enforcement results and tabulations shall not be used to evaluate such personnel or to impose production quotas and goals . . .

Now, we have introduced as Exhibit A this morning an Internal Revenue Service memorandum dated February 17, 1987; and it states that:

> You will be evaluated on your accomplishments or lack of accomplishments.

This was written by Chief of the Field Branch II to all Group Managers.

Have you heard of memos similar to this going out?

Mr. PEPPING. In my personal experience, I can't say I have seen it in written form.

Senator PRYOR. It wasn't very smart to put it in written form. [Laughter.]

Mr. PEPPING. That is nothing I would have done.

Senator PRYOR. Right.

Mr. PEPPING. But in all honesty, just recently in the Los Angeles District, we had an employee very proudly come into a manager who had voluntarily secured from a taxpayer a large sum of money to pay off some employment tax cases, without having to levy, lien, or close down the business.

And the direct quote from the manager was: "What this manager needs is not more full pays; what this manager needs is more seizures." And in fact, he was admonishing that employee for not exercising extreme collection actions—again, we have to believe, for statistical purposes. It is a continuing problem, and I don't believe it will ever change until you get those quantitative type demands out of the merit pay expectations of group managers.

Senator PRYOR. Mr. Gibbs says this is the policy, but if we enacted it into statute, wouldn't that help IRS employees who see something hanging on the wall and feel the pressure that they are not collecting enough or that this group is ahead of that one?

Mr. PEPPING. I think we can draw a very good analogy here to the almost complete shutdown of seizure activity back, I believe, in

1977 when the IRS lost the GM leasing case, which basically gave to taxpayers Fourth Amendment rights as to privacy. What that did was basically tell IRS employees, before they could go into a company—into the back area where the books and records are, where the inventory is—and close it down, you had to get a consent to enter. If the taxpayer did not give us a consent, we then had to go the court to get a writ of entry.

For several years, that slowed down seizures—I know in Los Angeles they dropped off to almost nothing because of the long time frames it took to get these writs. However, the way to bring your statistics back up is we were encouraged to go make seizures of real estate, which we didn't have to inventory except with a legal description and hand the taxpayer a notice saying here is your property I have described and it is now under seizure; and that counts as a point in the book.

I firmly believe there are ways of almost getting around any type of legislation in a legal manner if statistics is what is driving the system.

Senator PRYOR. Right.

Mr. TOBIAS. Senator, we would very much support some legislation which would prohibit the collecting of statistics and their use in evaluations; and this hearing has focused much on collection activities.

Senator PRYOR. Yes.

Mr. TOBIAS. We would urge that it would also include the examination activities as well, which is the other side of the IRS house, that would cover both of those areas because the problems are clear in both areas.

Senator PRYOR. Thank you, Mr. Tobias.

I don't want to be naive when I say I am on the Finance Committee and we are charged with raising the money that keeps this Government going, but in my home State of Arkansas, Senator Reid, we have a tax collection system. I have been a State Representative and a Congressman and a Governor and a Senator, and to the best of my knowledge, I don't know that I have heard any complaints about that system. I don't know that any fear exists with our State revenue offices, nor do I know of any major delinquencies that have not been worked out after negotiations with the taxpayer and the State Department of Finance and Administration. So, maybe you ought to go down to Arkansas and look and see what we are doing there. [Laughter.]

Senator PRYOR. I don't know what it is, but seemingly, it is working. It is based on respect and not fear. We hope that is what we can do in the Taxpayers' Bill of Rights. Senator Reid?

Senator REID. Mr. Chairman, I am wondering if we could make part of the record this report that Mr. Pepping talked about on IRS stress. I am sure we can find a copy of it someplace.

Senator PRYOR. Is there such a report?

Mr. BATES. Yes.

Senator REID. I would like to have that made a part of this record.

Senator PRYOR. We will make it a part of the record. I think that is very constructive.

[The prepared report is in the committee files.]

Senator REID. You heard the testimony this morning of Mr. Brown, Mr. Miller, and Ms. Garcia, the three witnesses that work for the IRS collection agencies. You all heard that testimony, did you not?

Mr. TOBIAS. Yes.

Mr. PEPPING. Yes.

Mr. BATES. Yes.

Senator REID. They, without hesitation, said that the problem existed that there were too many managers and too few people to execute the managers' plans. Did you hear that?

Mr. PEPPING. Yes.

Senator REID. Would you agree that we need more revenue agents?

Mr. PEPPING. Revenue officers?

Senator REID. Yes.

Mr. PEPPING. I can speak for our district. On an average in our district we have almost 400 revenue officers, I believe; and its not uncommon through attrition alone, which can be a combination of retirements, going to other agencies, or just getting tired of the system and leaving, we lose between 80 and 100 revenue officers a year. We have a serious problem in keeping trained personnel in the field; and much of it gets back, I have to believe, to the way they are treated from the time they come on board.

Senator REID. Do you feel it would be a more efficient service—that is, using the term "efficiency" in this sense since the Federal Government would collect more money—if we had more revenue officers to work on fewer cases? Would they do a better job and collect as much money?

Mr. PEPPING. I believe they would collect more money because, when you are trying to balance out a high number of cases, you end up giving a little attention to a lot of items; and it is never going to be as successful as devoting time and energy to sitting down and working out with the taxpayer the best method of liquidating that debt.

Senator REID. Mr. Tobias, I have looked at your statement, and there are things in The Taxpayer's Bill of Rights that you like and there are things that you don't like; and I am sure that is the way things are.

It would seem to me that you could be of assistance to this committee, and I make the same offer to you that I did through the chairman to Commissioner Gibbs. That is, give us some direction as to what you think should be done; and if you would submit that in writing to the committee, we would appreciate that—looking at our bill—and you have done that in your statement. I would disagree with some of the things that you have said, but I respect your opinion. But in addition to that, you might have some new ideas that would be of some assistance to the staff and the committee. And if you could get that to us as quickly as possible, we would appreciate that.

Mr. TOBIAS. We would be very pleased to do that, and we are pleased that you asked.

[The prepared information is in the committee files.]

Senator REID. Mr. Chairman, the hour is late, and we could spend a lot of time asking a lot of questions of these witnesses. I wont' take any more time now.

Except I would like to ask: We have heard the statement about "call-in sites." Is that the term I heard?

Mr. TOBIAS. ACS sites. Automatic Collection Sites. Yes.

Senator REID. What are they?

Mr. TOBIAS. They are located in several areas of the country, and they were an attempt by the Internal Revenue Service to identify certain cases that could be handled over the telephone. So, a person sits behind a screen——

Senator REID. We have that in Las Vegas, you know.

Mr. TOBIAS. Yes. The tax return comes on the screen. The employees deal with the taxpayer over the phone. And there is no contact other than telephonic contact.

Senator REID. That is one of the big complaints I have received; there is no personal touch. It is just so impersonal and that is what this is.

Senator PRYOR. We received a letter two weeks ago, Mr. Tobias, and it said: Senator Pryor, please, please put me in touch with a human being in the Internal Revenue Service. [Laughter.]

Mr. TOBIAS. It is a very serious problem. The whole system was developed in an attempt to try to collect more money using fewer people. And I think that the backlash is the kind of backlash that you are describing.

Senator PRYOR. I think Mr. Bates has a story about a Dallas school teacher. I have not heard that story, but it might be a case in point.

Mr. BATES. That might have come off the Nightline show. I think that was in reference to one of those cases where, by the time the case got to me and I contacted her for collection, a lien had already been filed and, in fact, they had already attached her wages for several months and it was ongoing. Yes, she said the same thing: How do I get to talk to people? I would say that right now that is the number one complaint by taxpayers: How do I get a hold of somebody and how do I talk to them?

Senator PRYOR. I am glad Senator Reid has introduced this part of our discussion and I am going to ask the General Accounting Office to do a study just on this issue. I think that story would be material that would be most helpful in doing this. They may be coming to you, Mr. Bates, or Mr. Pepping, or Mr. Tobias to seek your help in preparing such a study. We really have a problem there, and it is sometimes permanently damaging to the taxpayer, especially if the taxpayer has already paid up everything he owes and doesn't owe anything. Then, liens are filed and it goes on his record.

Mr. Pepping, I want to ask you this final question. Have you ever seized or levied against some taxpayer in your line of work where you felt that an agreement could have been worked out, where your manager had told you to collect?

Mr. PEPPING. I have done that several times. It was quite in the distant past and probably under unusual circumstaoces. That was primarily during the 1970s when we laid an excise tax on our telephone bills to help support the war effort; and we were under strict

orders in collection that those liabilities, which ranged from 30 cents to $3.00 or $4.00, could not be written off at any cost; and I in fact seized several homes and several cars for tax liabilities of less than $10.00.

Senator PRYOR. If you auctioned off those homes or cars, what happened to the balance? Did the taxpayer get that?

Mr. PEPPING. Any surplus proceeds after a check for other liabilities are available to the taxpayer to file a claim for refund.

Senator PRYOR. But the taxpayer has to file that claim?

Mr. PEPPING. Correct.

Senator REID. Mr. Chairman?

Senator PRYOR. Yes?

Senator REID. I am sorry to interrupt you. I have just one thing that I wanted to say to Mr. Tobias, and you can respond to this in your written response to the committee.

You know, most independent agencies, as well as every cabinet level agency—Justice, Treasury—have a statutory office of the Inspector General. In your statement, I looked with interest in your disagreeing with that; I would like you to give us a lot more detail because I think that it is needed at Treasury as it has been very, very useful at other places.

One last thing, Mr. Chairman. When I saw the list of witnesses that the committee had prepared under your direction, I expected—you know, being an old trial lawyer—to find a bunch of radical people who didn't fit into the system, maybe coming in different appearances of disarray; but I have been so impressed all day with the 11 or so witnesses that we have had come in: Mr. Pepping, Mr. Bates, the other panel of revenue agents before them. These are high quality Americans.

And I think the statement made by the one agent when responding to: Why did you do this? And basically, it all summed up because he thought it was his patriotic duty to do so, even though he recognized it wouldn't help his career.

And I think that is commendable, and I can only go along with what my colleagues have said—how much we appreciate your leadership in this issue. But for your position on this committee, all of us could have all the great ideas that we wanted; but without this committee apparatus to hold these hearings, nothing would work. So, thank you very much.

Senator PRYOR. Thank you, Senator Reid. Let me say in summary that one thing that this hearing has done for me is to make me very cautious in the future about generically characterizing all the 100,000 employees of IRS as being bad.

We have seen a strong representative group of many of those employees, and I must say I have visited individually with some of the employees of IRS, and they have not come forward as openly in public as you have but we have a lot of splendid people working for the Internal Revenue Service.

I know that there is pressure. There is fear on the part of those employees toward their supervisors or managers.

This has been a very educational and constructive hearing for this committee this morning. Is there any further statement from any of the three witnesses?

[No response.]

Senator PRYOR. We do stand adjourned. We thank you very, very much for your presence.

Mr. TOBIAS. Thank you, Senator.

Mr. BATES. Thank you, Senator.

Mr. PEPPING. Thank you, Senator.

[Whereupon, at 12:33 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

JUL 22 1987

The Honorable Harry M. Reid
United States Senate
Washington, DC 20510

Dear Senator Reid:

This is in response to your April 23, 1987 letter containing additional questions for the April 21 hearing record on the Omnibus Taxpayers' Bill of Rights, S. 604. Our response to those questions is enclosed.

If you have any additional questions, please feel free to contact me.

With best regards,

Sincerely,

Enclosure

**Question I.**

Section 4 of S. 604 "procedures involving taxpayer interviews" would codify several sections of the Internal Revenue Manual (IRM) allowing taxpayers to authorize representation. There is some controversy surrounding the practice in several Districts of routinely ignoring duly authorized representatives and directly interviewing taxpayers.

Section 4055.20(2) IRM accords taxpayer representatives "...all due rights and privileges in the representation of his/her client". Moreover, Section 4055.22(3) IRM allows a by-pass of the taxpayer's representative in cases where the representative is responsible for unreasonable delay or hindrance of the IRS examination or investigation of the taxpayer.

Why is the IRS in effect "out flanking" duly authorized representatives, ignoring provisions found in the IRM and examining taxpayers rather than taxpayers' records?

**Answer:**

I want to emphasize that the IRS position on interviewing the taxpayer does not by-pass duly authorized representatives in asking that the taxpayer be available to answer questions during an examination. In fact, it is anticipated that the taxpayer's representative will be involved in these examinations.

The practice of interviewing the taxpayer directly is not new; it is one that is utilized, when warranted, to develop essential information about the taxpayer and his or her financial dealings and accumulation of assets. However, increased emphasis has recently been placed on this auditing technique because the Service is attempting to improve the quality of its examinations.

The purpose of an examination is to determine the taxpayer's correct tax liability. To accomplish this, enough information must be obtained so that the examiner can reasonably determine that the taxpayer is reporting all of his income and is complying with all applicable tax laws. If the taxpayer's representative has not been the one who is maintaining all of the taxpayer's books and records, he may not be in a position to know the answers to questions and the examination cannot continue until the representative goes back to consult with the taxpayer. Experience has shown that the most effective and efficient method to obtain the necessary information is from the taxpayer. This provides an opportunity for the examiner and the taxpayer to discuss and clarify questionable issues or items without going through an intermediary.

While representatives may provide information about the accounting records, preparation of the return, etc., only the taxpayer has first-hand knowledge of the business operations. All of this information must be considered before the examiner can evaluate the accuracy of the books and records, determine the scope of the examination and reach a proper conclusion concerning the tax liability reported. Thus, having the taxpayer present at some initial interviews may result in achieving a one-step audit, saving the taxpayer time and money. Therefore, the IRS believes that a personal interview of the taxpayer is an examination technique that can benefit both the taxpayer and the examiner. While interviewing the taxpayer can be beneficial it is not required for most examinations; we use the interview only when appropriate.

We are developing criteria to establish when the taxpayer's presence will be requested at the initial interview. Whether or not the taxpayer is required to be present at the initial interview will not preclude a subsequent request to interview the taxpayer at a later time to resolve matters which surface during the course of the examination.

The participation of a qualified representative is never precluded. A representative always has the right to be present when the taxpayer is interviewed. The representative's participation can be beneficial and can contribute to the goal of a quality examination with the least inconvenience to the taxpayer and the examiner.

Question II.

How does the IRS National Office control and monitor the activities of regional and district offices?

Answer:

Each assistant commissioner in the National Office is responsible for a particular function and its programs throughout the Service. He or she supervises the development, issuance, and maintenance of the function's operating procedures and follows-up to assure that all field offices are properly carrying out these programs and procedures.

In evaluating the activities of the field, the assistant commissioner monitors data from a multitude of sources, e.g., management information reports, regional conferences, regional reports on visitations made to the districts, etc. This data is monitored for trends or indicators of possible problem areas. Upon identification of a possible problem area, National Office program analysts make field visitations to determine the cause and to propose corrective actions as warranted. The visits are usually made in conjunction with the assistant regional commissioner for the function visited. Additionally, these reports form the basis for an evaluation of the performance of that assistant regional commissioner.

The deputy commissioner has line authority over the assistant commissioners and over the regional commissioners. Each regional commissioner has line authority over all districts within the region. Field visitations and other reports are used to evaluate both the effectiveness and correctness of field programs and procedures. Field visitation reports are used as part of the National Office Review Program (NORP). The purpose of the NORP is to assess the effectiveness of a region, as a whole, in carrying out its primary role of supervising the districts and service centers. Pursuant to an established schedule, a NORP conference is convened with respect to a particular region. Prior to the conference each assistant commissioner provides the Deputy Commissioner with a report which consists of an overall assessment of his or her function within a region. The overall assessment is derived by combining the aforementioned functional visitation reports with day-to-day monitoring of activities. This combination results in an assessment of the region's program management, accomplishment of yearly program objectives, utilization of resources and managerial effectiveness.

Similar visitation and review programs are carried out by the regions in their role of supervising the districts and service centers.

In addition to review systems within each function, the Office of the Assistant Commissioner (Inspection) acts to independently review and appraise all IRS operations. Inspection has separate offices in each of the 7 regions and is broken down further into Internal Audit and Internal Security Divisions. Internal Audit has responsibility for examination of operations at all levels and includes review and appraisal of policies, practices and procedures within the IRS. Internal Security has responsibility for character and security investigation of employees and prospective employees as well as investigation of charges of improper conduct and irregularities on the part of Service officials and employees.

Question III.

What is the role of the IRS Commissioner's Advisory Group, and how is its membership constituted?

Answer:

The primary role of the Commissioner's Advisory Group is to provide an organized public forum for discussions of relevant tax administration issues between officials of IRS and representatives of the private sector. Because tax administration affects nearly all citizens on a continuing basis, the IRS is especially conscious of its impact of the public. Accordingly, the Advisory Group conveys to the IRS the public's perceptions of the Service's activities.

Members of the group are selected from nominees identified by members of past Commissioner's Advisory Groups. professional and public interest groups, as well as others interested in tax administration. Also, any citizen may offer his or her name in nomination. The Advisory Group is generally composed of accountants, attorneys, other tax practitioners, academics, and representatives from public interest groups. To be selected, nominees must show a real interest in tax administration and their experiences must indicate that they would be representative of the greatest range of taxpayer concerns. Appointments are made by the Commissioner.

A list of the 18 members of the 1987 Commissioner's Advisory Group is attached.

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**Question IV.**

What is the procedure for amending the IRM and are proposed changes open to public comment?

**Answer:**

The attached Internal Revenue Manual (IRM) provision describes in detail the procedure for amending the IRM. Generally, the National Office function responsible for the program, drafts proposed changes which are published in the Manual after review by other IRS functions that may be affected. Revised IRM instructions are available to the public unless they involve law enforcement material such as dollar tolerances utilized for administrative efficiency which would lose their effectiveness if published. If taxpayers want to comment on an IRM provision, they should write to the Commissioner and their comments will be forwarded to the proper office for consideration in connection with future manual changes or revisions.

**221** *(4-8-85)* 1230
**National Office Officials**

(1) Assistant Commissioners and Director, Appeals Division Assistants to the Commissioner (and their delegates) are responsible for the initiation, content, and timely clearance of internal management documents (see text 224) affecting their respective functional areas. The responsibilities include:

(a) primary determination of the need for the issuance of an IMD;

(b) accuracy and completeness of content, including conformance with Service policies, delegated authority, and organizational responsibilities;

(c) developmental coordination, timely clearance, and substantive review within the National Office, including allowing reasonable time for consideration by offices concerned;

(d) providing adequate lead time to implement National Office issuances by setting realistic effective dates, response dates or action dates (see text 232.1 and 232.2);

(e) conformance with standards for style and format; and

(f) determination of the effect of the IMD on other IMD's.

(2) Assistant Commissioners, Assistants to the Commissioner, Division/Staff Directors, supervisors, managers and staff assistants of the originating Activity reviewing proposed internal management documents are fully responsible for all items listed in (1) above and all other requirements for proper preparation and timely clearance of documents.

(3) Supervisors, managers, and staff assistants of other than the originating Activity reviewing proposed internal management documents are responsible for determining the effect of proposed documents on their Activity, their internal management documents, and the need for issuance of the document or related implementing instructions to personnel in their Activity. They are also responsible for timely clearance of these proposed IMD's through their Activity.

(4) The Assistant Commissioner (Support and Services) has over-all responsibility for designing and administering the directive management program. For National Office issuances, this includes:

(a) establishing standards for style and format of internal management documents;

(b) reviewing documents before issuance for conformance with policies of the Service and established standards of style and format, delegated authority and organization;

(c) determining proper coordination and clearance;

(d) providing the last check point for determining appropriateness of effective dates, response dates, and action dates (see text 232.3);

(e) arranging for publication in the Federal Register of all statements on organization and functions, as well as delegations of authority which affect rights and duties of taxpayers (see IRM 11(14)0);

(f) determining, or reviewing determination, of the proper category of each document, numbering it, and clearing it for reproduction and distribution; and

(g) reviewing determination of the effect on other documents.

**222** *(4-8-85)* 1230
**Field Officials**

(1) Regional Commissioners, Regional Directors of Appeals, District Directors and Service Center Directors as well as National Office officials, are responsible for providing internal controls to ensure that internal management documents reach the proper officers and employees and that the instructions are carried out by the appropriate personnel.

(2) Regional Commissioners and Regional Directors of Appeals are responsible for issuing an appropriate regional internal management document to delegate authority; or when it is necessary to interpret or implement (but not to restate or repeat) National Office instructions on a region-wide scale; or when the regional office desires to transmit instructions or information on regional programs or procedures unrelated to any particular National Office document or instructions. District Directors and Service Center Directors are responsible for issuing appropriate internal management documents, for the same purposes as above, within their respective districts and centers. Periodically, management officials should review the practices in their respective areas to ensure that issuances are being made only in accordance with the above requirements, in order to avoid the unnecessary issuance of documents causing waste of printing, distribution, filing time, and the time of technical personnel in preparing and reading the issuances.

**223** *(4–8–85)* 1230
**Administration of the IMD System**

(1) The Directives Management Branch, of the Facilities Management Division (PM:S:FM:D) is responsible for designing and administering the Service's Directives Management Program and for establishing standards for style and format of National Office IMD's. The Branch receives all internal management documents, as well as memorandums containing instructions addressed to a group of officials, issued from the National Office, for adequacy of coordination and clearance; determination of proper category for issuance; conformance with established Service policies, delegations of authority, and organizational titles and designations; and effects coordination and clearance of such issuances as may be required. The Branch is responsible for substantive review, evaluation and coordination of new and revised statements of Service policy, delegation orders, and organizational changes, prepared for the Commissioner's or Deputy Commissioner's approval.

(2) The Publishing Services Branch, of the Facilities Management Division (PM:S:FM:P) is responsible for planning, developing, coordinating, administering, and evaluating the policies, systems, procedures, and standards for the publishing needs of the Internal Revenue Service. The Branch is responsible for the fiscal control, planning, analysis, graphic design, requirements determination, procurement, integrated scheduling, inventory maintenance, and distribution of all published material. Internal management documents are a special responsibility of the Branch relative to preparation of copy, printing, and distribution.

**224** *(7–9–80)* 1230
**National Office Clearance Procedures**

**224.1** *(4–8–85)* 1230
**General**

(1) Form 2061, Document Clearance Record, will be used to obtain review and clearance of *all* affected National Office internal management documents. Form 2061 serves as a control, a routing slip, and a record of review and clearances obtained. (See also text 224.4.)

(2) Each Activity will maintain a file in a central location of copies of Forms 2061 which have been initialed by the Division/Staff Director. The file will be used for purposes of control and reporting on documents originated within the Activity.

(3) The originating date for IMD's, as indicated in Item 9 of the Form 2061, will be the date the document is approved by the originating Division/Staff Director regardless of signature level. This date will be used in determining the clearance period for each IMD as specified in (4) below. The "ending" date for clearance is the date the IMD is cleared by PM:S:FM:D to be printed.

(4) All internal management documents and instructional memorandums will be assigned one of the following priorities prior to beginning formal clearance:

(a) Routine–must be cleared through all functions within a total of 60 calendar days unless the initiator specifies an earlier due date. This priority may be assigned by the initiator.

(b) Rush–must be cleared through all functions within a total of 15 calendar days. This priority may be assigned only by the Division/Staff Director or higher level official.

(c) Critical–must be cleared through all functions within two workdays. This priority may be assigned only by the Assistant Commissioner or higher level official.

(5) Special clearance requirements for ADP Handbooks and IRM Parts II and III are set forth in text 264 of this Handbook.

**224.2** *(4–8–85)* 1230
**Routing and Clearance**

(1) The routing and clearance of internal management documents (and memorandums used as emergency IMD's in accordance with Chapter 400 of this Handbook) should always include the division level or higher level official for each Activity required to review and clear the document.

(2) The routing of internal management documents usually will be through all necessary officials within the originating Assistant Commissioner's office or the office of the Assistant to the Commissioner before being routed to other officials for review, concurrence, or signature. This ensures that the needed approval or signature of the highest level official in the originating function has been obtained before other officials review the proposed issuance. However, under special circumstances, an office may informally request an opinion of Chief Counsel or other area in advance, so that the highest level official will have the benefit of such opinion before approval or signature. If, during review of proposed issuances, changes are believed to be necessary, the reviewing office may make

changes only with the approval of the originating office. The originating office is responsible for clearing substantive changes with prior reviewing officials. "Qualified" clearances constitute clearance subject to identified changes. It is desirable to resolve any such differences prior to sending the IMD for further clearance. This expedites the review of the document and keeps the processing period to a minimum length of time. Clearances with "comments" or recommendations should cause the originator and his/her division or staff to reconsider the document and determine whether any revision is appropriate, but this determination rests with the originating office. Reviewers whose names do not appear on the Form 2061 may initial in the "Comments" column.

(3) Routing and clearance should be as follows:

(a) Routine IMD's generally will not require simultaneous clearance; however this is optional.

(b) Rush IMD's must receive simultaneous clearance.

(c) Critical IMD's must be handcarried for simultaneous clearance.

(4) Simultaneous clearance may not be used for clearance of policy statements or Delegation Orders unless they are "Rush" or "Critical." These two categories of internal management documents are to be routed through the originating Assistant Commissioner, Assistant to the Commissioner or Director, Appeals Division direct to the Chief, Directives Management Branch and the Assistant Commissioner (Support and Services) and for Policy Statements, the Assistant Commissioner (Planning, Finance and Research) and then to other officials involved for initialing and to the Commissioner or Deputy Commissioner for signature. In the event the originating Assistant Commissioner or Assistant to the Commissioner desires to obtain the views of the Assistant Commissioner (Support and Services) or (Planning, Finance and Research) and the other officials involved prior to routing the proposed issuance for review, a draft proposal may be sent simultaneously for their comments to be used in preparing the final draft which will be routed on Form 2061 for review and clearance, as above.

(5) All internal management documents are to be routed to the Directives Management Branch (PM:S:FM:D) for final review and authorization for printing. That Branch will be the last clearance point on Form 2061.

### 224.3 *(4–8–85)* 1230
### Controls and Reports

(1) Each division/staff will have a centralized control point for all document clearances which they initiate. A second copy of Form 2061, Document Clearance Record, will be used for this purpose. Forms 2061 will provide the basic data required for the report described below. The Document Clearance Record will be retained in an open file until the document has been cleared for printing.

(2) A quarterly report will be prepared by each Division/Staff Director for all documents originated within their Activity still in an open status at the close of each quarter. This report will be submitted to their respective Assistant Commissioner or Assistant to the Commissioner. On the tenth workday following the close of a quarter, each Assistant Commissioner, Assistant to the Commissioner or Director, Appeals Division will submit to the Directives Management Branch a consolidated report which will include all of their internal management documents in clearance at the end of the prior quarter. Form 6175, Internal Management Document Quarterly Status Report, will be used for this report. Report Symbol NO–C–4 is assigned.

(3) A brief description or narrative will be provided as to the reason each document is overage, its present status, and projected date of clearance.

(4) The Directives Management Branch will submit a semiannual report to the Deputy Commissioner all Assistant Commissioners and Director, Appeals Division. Interim reports will be submitted if statistics indicate a need.

### 224.4 *(4–8–85)* 1230
### Impact on Other Functions

(1) IMD's should be cleared by all functions which are affected by the document; that is, when the IMD contains instructions or guidelines for the function, or when "input" is expected. During the clearance process, the offices involved will consider carefully the impact on their procedures and will be sure to see that the document has correctly specified the "Effect," that the correct subject classification code(s) (if a Supplement) and the appropriate distribution are indicated, and that the distribution is shown both on the Form 2061 and on the document itself.

(a) Some of the most frequent clearance points are indicated on the Form 2061 under "Originator's Developmental Coordination Prior to Routing and Review." This should be considered carefully during the preliminary drafting of an IMD. If a document affects or concerns any of the following items, coordination with appropriate offices in advance will usually expedite final clearance:

1 service to the public (D:R:T)

2 matters affecting the public (C:I)

3 disclosure of official information (PM:S:DS)

4 new or revised financial requirements (resource decision-making) (PM:PFR:F)

5 establishment of, revision of, or reference to, reporting requirements (PM:S:FM:O)

6 questions or unusual problems regarding the Internal Management Document System (PM:S:FM:D)

7 rights or duties of taxpayers. (If this item is checked, a Revenue Procedure should be prepared.) Also consider a policy statement. See IRM (11)900 and IRM 1210 and text 242 of this Handbook.

8 environmental impact (see IRM 125(17).4)

9 public-use forms or form letters (PM:S:FM:P) and/or (PM:S:FP)

10 reference to forms, new or revised publications, forms, form letters, pattern letters or paragraphs, formats, exhibits, standard forms or envelopes (PM:S:FM) and/or (PM:S:FP)

11 special printing, production scheduling, or special distribution patterns (PM:S:FM)

12 other functional or advisory areas.

13 security protection for information, property, documents, data systems, etc. (PM:S:DS)

(b) Clearances may be divided into two categories: "nice to know" and "need to know." When the category of clearance is unclear or questionable, a telephone call may indicate whether or not the office wishes to see, or should review, the document. In any event when an additional clearance point is added, no IMD should be forwarded to another office without contacting the originator of the document or the IMD Coordinator for the originating organization. Then, opportunity is given for handcarry of the document. All dates of "movement" of IMD's should be recorded by the organization(s) involved.

(c) An IMD may be routed through an organization as a courtesy (for information) or for verification of internal citations to that organization's current, related procedures. (This may be done alternatively by telephone.) Under those circumstances, if a Supplement, no cross-referencing or distribution is involved; multiple coding or distribution of a Supplement are appropriate only when instructions affect present text or Exhibits, or when new instructions are being issued in the other area. Clearances are dependent upon responsibility of the clearing organization.

(2) Special clearance requirements for ADP Handbooks and IRM Parts II and III are set forth in text 264 of this Handbook.

Question V.

Despite the issuance of Policy Statement P-1-20 in 1973 and the assurances of you and your predecessors to the contrary, evaluation of personnel is in some cases based on a "quota system". Has the office of Audit or Investigation looked into this matter? If so, what were the findings of the investigation? What steps can the IRS take to effectively put an end to this practice?

Answer:

In reviewing the effectiveness and efficiency of collection practices, Inspection has made a number of national reviews and analyses that relate to the use of statistics or quotas as an evaluative tool.

For example, in 1980, as the direct result of Congressional concerns relating to the Service's increasing use and alleged abuses involving liens, levies and seizures, and the impact of these actions on small business taxpayers, internal audit analyzed the Service's collection enforcement activities. This review analyzed Collection policies and procedures and a random sample of 840 delinquent business accounts at six district offices in three different IRS regions. In its audit report dated March 30, 1981, Inspection concluded that the increases in collection enforcement activities that had occurred since 1978 were primarily attributable to increased management emphasis on results. However, the auditors found that enforcement actions taken were warranted and in conformance with the law. Also, no directives, memos, or reports to the field operations were found that contravened the established policy against use of statistics to evaluate performance.

Nevertheless, there was evidence that when the regions and districts received quarterly enforcement statistics from the National Office, these were viewed as a source of pressure to increase enforcement activities. About 85 percent of the Collection employees who responded to an Internal Audit questionnaire perceived the emphasis on enforced collection to be considerably increased. As a result, a memo was issued to all Assistant Regional Commissioners (Collection) stating that statistics are to be used only by the regions and National Office and are not to be sent to districts since "erroneous inferences" could be drawn from them.

Internal Audit's report, "Efficiency of the Collection Field Function", dated July 24, 1985, stated that although Collection established dollar goals for the regions, they did not establish similar goals for the districts. To improve

Collection management control, Internal Audit recommended that Collection establish performance indicators that are directly related to program goals. These indicators were to be used to promptly identify changes in revenue officer performance, and to assist those having difficulty by providing them with the techniques utilized by successful revenue officers. The program indicators recommended related generally to the number of dispositions, collections, returns secured, etc., per staff hour spent in these activities. The report specifically stated that there should be no maintenance or use of individual enforcement statistics relating to seizures, levies or liens. The goal was to improve performance by appropriate and more efficient disposition of cases. Collection accepted this recommendation in the same spirit, noting that quality should not be sacrificed and that statistics must be balanced with emphasis on timely and appropriate actions.

An Internal Revenue Manual revision in 1986 added factors to benefit group managers in work reviews. The factors are a composite of performance and quality indicators which can be used to identify performance problems in order to provide assistance to revenue officers whose quality of work is in need of improvement. Also, since September 1986, several steering committees have been working to develop additional quality work standards for the Collection function. These committees are composed of field executives and managers who have worked closely with management in all of our district offices. The standards they are developing specifically identify those actions employees are expected to take in working cases properly.

An internal study group recently recommended more internal audit reviews of district office activities where issues such as quota systems can be reviewed. The Assistant Commissioner (Inspection) has approved this recommendation and has already provided instructions to Regional Inspectors asking them to make such reviews.

Question VI.

What modifications can you suggest to make Section 7, "Authorizing, Requiring, or Conducting Certain Investigations etc..." of S. 604 compatible with the concerns mentioned in your "Comments on Taxpayer Bill of Rights Legislation"?

**Answer:**

We have traced this provision back to 1975 when it was initially introduced in response to an attempt to politically misuse the IRS. If the provision's intent continues to be one of preventing political manipulation and abuse of the Service's investigative authority, we feel that this should be made clear.

In addition to the above, we recommend deleting the portion of the section imposing personal liability on IRS employees since it would have a negative impact on programs because of the potential for less vigorous enforcement of the revenue laws. Such liability would also cause a major recruitment/retention problem, which could impact on the quality of many Service Programs.

Without the above modifications, we strongly oppose the provision as it would restrict the criminal investigation of tax evaders and grant a blanket immunity from criminal tax investigations and prosecutions based upon an individual's particular beliefs, or associations. In the criminal prosecution of a tax evader, the government must prove beyond a reasonable doubt that a particular taxpayer deliberately, with specific intent, violated the income tax laws. Such proof requires an investigation of that person's intentions ("beliefs").

Question VII.

The problem of installment agreements concerning me is not the problem of agreements being "too liberal" or "too conservative". Rather, I am concerned with the problem of inconsistency or breach of agreement on the part of the IRS. For example, the IRS makes an installment agreement with the taxpayer, the taxpayer meets the terms of the agreement but nevertheless the IRS makes a jeopardy levy thus violating the terms of the agreement. What suggestions can you make to address the problems enumerated above?

Answer:

After acceptance of an installment agreement, a notice of levy can be issued because the taxpayer has violated one or more conditions of the agreement, because the collection is in jeopardy or because of Service error.

Occasionally, levies are issued in error where the IRS has accepted a recent agreement. These unfortunate instances are due to delays or errors in communications between offices. Our computer system is designed to prevent levy by placing accounts subject to agreements in a special status which precludes automatic generation of levy notices and alerts IRS employees that an agreement is in effect. While the accounts are placed in this status as quickly as possible upon acceptance of an agreement, a levy could be issued before the necessary computer input can be accomplished. In some instances an installment agreement may be accepted in one office while, at the same time, a levy is being issued by another. We attempt to minimize these occurrences by allowing ample time for taxpayers to respond to these notices before levies are issued. As we further automate our collection activities, additional safeguards in this area will be possible through improved and faster communications between offices.

However, we note that the vast majority of levies occurring after a taxpayer has entered into an installment agreement concern cases where the taxpayer has violated one or more of the terms of the installment agreement while still making payments under the agreement. Often, such things as failure to timely pay and file returns for current taxes or significant increases in the taxpayer's ability to pay, as reflected by changes in their adjusted gross income, will occur and will trigger a levy. Virtually all installment agreements are monitored by our computer system which issues an appropriate letter to the taxpayer or alerts our employees to the need to contact the taxpayer when an agreement appears to be in default or review of the agreement is necessary. This is to give the taxpayer an opportunity to resolve the problem before enforcement action is taken. Failure to respond to this

letter will result in the issuance of a notice of levy. We are continuing to emphasize to our employees the need to impress on taxpayers that compliance with all the terms of an installment agreement is necessary to avoid default and possible levy.

The last situation where a levy takes place after an installment agreement has been entered into, is a jeopardy levy, but this is very rare. A jeopardy levy only takes place after the acceptance of an agreement where facts have come to our attention that indicate that immediate enforcement is necessary to avoid material loss to the government. Examples would be learning that a taxpayer is about to flee the country, is secreting assets or is placing them in the names of others.

Question VIII.

Please provide me with criteria under which the Ombudsman could issue a Taxpayer Assistance Order.

Answer:

Currently, we will hold a pending enforcement action in abeyance in situations of severe hardship, alleged improper notifications, questionable liability, or other reasons indicating that the action may be improper. Unlike the proposal, not only the Taxpayer Ombudsman but also Regional Commissioners, District Directors, Problem Resolution Officers, Division Chiefs, Branch Chiefs, and Group Managers have the authority to suspend actions until a problem is resolved. In fact, they frequently ask that actions be put on hold until a case can be reviewed. If there is a dispute as to the propriety of the action, the decision to stop the action can be referred to the Deputy Commissioner.

If a taxpayer complaint or problem is received in any Problem Resolution Program (PRP) office of the Taxpayer Ombudsman, the first action generally is to contact that part of the organization currently involved in the taxpayer's case and assure that any potentially harmful action against the taxpayer is stopped until further notice. This allows PRP and appropriate management personnel time to review the matter and determine whether or not the action being taken or contemplated is correct, with the aim being to stop any incorrect action against the taxpayer. In effect, the Taxpayer Ombudsman or any PRP personnel will take steps to stop any action that may harm a taxpayer if the taxpayer has contacted or been referred to PRP with a problem or a complaint and it appears the action may be incorrect. Taxpayer Assistance Orders would be issued in the same type of cases.

**Question IX.**

Your comment to Section 14 "Minimum Sale Price" of S. 604 is a valid one. What modifications to this provision can you suggest to delineate between punitive penalties, costly to enforce yet necessary to deter noncompliance, and those actions executed for the purpose of satisfying tax liabilities?

**Answer:**

The comment referred to in your question was intended to address section 8(d) of S. 604 concerning uneconomical levy. That provision would preclude levy on property if the expenses of seizure and sale would exceed either the fair market value of the property or the amount of the tax liability. We recommended that since the average cost of a seizure and sale is about $500, the provision would, in essence, provide a $500 exemption for taxpayers and tax protesters alike.

Current law treats all liabilities arising under Title 26 equally for purposes of collection. We would oppose changes, such as this, which statutorily earmark any type of liability for more or less vigorous enforcement.

While a major effect of this provision would be to lessen the impact of certain punitive penalties, its full impact would be much broader. It would establish a de facto levy exemption for all taxpayers or tax protesters and all liabilities. The amount of this exemption would average $500, but would be higher or lower in individual cases depending on the nature of the taxpayer's distrainable assets. Some taxpayers, particularly tax protesters, having disposed of or having placed beyond our reach readily seized assets, such as bank accounts, would be able to pay all but this amount with confidence that collection of the balance would not be enforced. In other instances, seizure would be postponed until the amount of the liability increased, either by new delinquencies or the simple accrual of penalty and interest. In the latter cases, taxpayers, whom the provision appears designed to protect, would actually suffer as a result paying more interest than would be due under current law.

# TAX DIVISION

# OF THE

# AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on
S. 579 Taxpayer's Bill of Rights Act
and
S. 604 Omnibus Taxpayer's Bill of Rights Act

Submitted to the
Senate Finance Subcommittee on
Private Retirement Plans and Oversight of the IRS

July 22, 1987

General Comments

The tax system is critical to the proper functioning of our government, and we should strive to improve its effectiveness, efficiency, and sense of justice. Although we agree with and endorse certain concepts in this legislation, we believe some of the proposals will unduly restrict appropriate action by the IRS or are otherwise inconsistant with the above-stated goals. We have, therefore, commented on some of the separate provisions of the legislation but do not express an opinion on either of the bills taken as a whole.

The comments on succeeding pages are given numbers corresponding to the numbers contained in Part III, Description of the Provisions of S.604 and S.579, contained in the Description of S. 604 and S. 579 (Taxpayers' Bill of Rights Act).

We would be pleased to work with the committee and its staff as you further consider this legislation.

1. DISCLOSURE OF RIGHTS AND OBLIGATIONS OF TAXPAYERS

Current IRS procedures require the distribution of certain informational material to taxpayers. In practice, the procedure is not followed and codification of these requirements would not only ensure the dissemination of this needed information but also expand the amount distributed. This is especially important considering that a large majority of taxpayers are not represented by tax professionals.

To conserve the IRS' limited resources, we suggest that the document incorporate much of the information the IRS already makes available to taxpayers.

We support this provision.

2. OFFICE OF INSPECTOR GENERAL

The AICPA has not had an opportunity to fully evaluate this provision, and we, therefore, express no opinion.

3. PROCEDURES INVOLVING INTERVIEWS OF TAXPAYERS

A. We believe that IRS agents should have a certain amount of discretion in determining the location of an audit. Far too often, however, greater emphasis is placed on holding the audit at the taxpayer's place of business where it is not reasonable to do so. For example, when the taxpayer's accountant maintains the books and records of the business on the accountant's premises or there is no proper place for the agent to conduct the audit at the taxpayer's business site (i.e., a fast food restaurant). We, therefore, support the provision that allows the taxpayer to request an interview at a time and location that is reasonable to all parties involved.

B. The provision regarding the reading of "rights" extends the warning given in the context of a criminal investigation to a routine civil proceeding. The creation of a "criminal" atmosphere would only frighten taxpayers and cause ill feelings towards the Service.

The more appropriate time to communicate the taxpayers' "rights" would be in whatever part of the examination criminal exposure arises. We do not support this provision.

C. The last provision in this section, concerning represented taxpayers, is extremely important. The IRS is presently encouraging the interviewing of taxpayers even though the taxpayers have designated a qualified practitioner to represent them through a power of attorney. The Service is attempting to formalize this interviewing procedure through the issuance of guidelines that will amend the Internal Revenue Manual. We have previously communicated our concerns to the IRS and our letter is attached (Appendix A).

The legislation would correct most of our concerns, and we, therefore, support the provision relating to interviewing.

4. GAO OVERSIGHT OF THE ADMINISTRATION OF INTERNAL REVENUE LAWS

Subject to the GAO's ability to accomplish the stated objectives, we support the second provision which directs the GAO to prepare an annual report on specified administrative areas relevant to the operations of the IRS.

We do not express an opinion on the first and third provisions.

5. BASIS FOR EVALUATION OF IRS EMPLOYEES

Top IRS officials have repeatedly stated that amounts of taxes collected as a result of audit or investigative work or other objective criteria do not affect the evaluation of IRS personnel by their superiors. Yet, we continue to hear allegations that such monetary or statistical results are, in fact, used in the evaluation process. We believe that a clear legislative statement to that effect would more likely ensure that IRS practice conforms with the verbal statements of its management. Accordingly, we support the inclusion of this provision.

6. AUTHORIZING, REQUIRING, OR CONDUCTING CERTAIN INVESTIGATIONS

We agree with the general principle that no Federal agency should have the authority to conduct tax-related investigations into or surveillance of the beliefs or associations of any individual or organization. We would also concur with the stated exception for organized crime activities. The IRS, however, should have the ability to properly determine the exempt status of organizations which

have claimed that status. To the extent, therefore, that the IRS' legitimate needs are not addressed in this provision, we oppose it.

We also do not agree with the provisions authorizing fines or prison sentences for Federal employees who breach the proposed requirements. We believe the establishment of a system of fines or prison sentences against IRS employees would as Commissioner Gibbs has stated in another context, "have a chilling effect on our ability to recruit and retain quality people." We also agree with Commissioner Gibbs' statement that such penalties could inhibit proper enforcement of the tax laws. Accordingly, we also oppose this part of the provision.

7. LEVY & SEIZURE

Under this provision, the proposed legislation seeks to increase the period of time from 10 days to 30 days after notice and demand has been made before the IRS can levy on the taxpayer's property. We agree with this proposal.

Given the seriousness of the proposed action, an additional 20 days is warranted and will not cause a significant loss of revenue. In addition, this provision would require that the IRS provide information to the taxpayer subject to a levy regarding procedures and appeals available to him. This appears desirable in that many affected taxpayers may not be aware of their rights.

This bill would also increase the amount of property that would be exempt from the levy process. It is proposed to increase the exemption for personal effects from $1,500 to $10,000. In addition, the exemption for property essential to the conduct of a trade or business is increased from $1,000 to $10,000. These proposed amounts appear reasonable, and we therefore support the proposed increases.

8. REVIEW OF JEOPARDY LEVY AND ASSESSMENTS

We recognize that there have been abuses in this area, and we agree with the need for additional administrative and/or judicial review procedures. We take no position, however, as to the appropriateness of applying the jeopardy assessment review procedures under present law to levies.

9. INSTALLMENT PAYMENTS OF TAX LIABILITY

In cases involving liabilities of more than $20,000, the bill would allow the IRS to enter into installment payment agreements with taxpayers if the IRS determined that the agreement would facilitate payment. We believe this change is desirable in that it allows the IRS flexibility in determining who qualifies for installment payments. However, the bill makes it mandatory for the IRS to enter into an installment payment agreement when the levy in question is not in excess of $20,000. Overall, we believe the offer of installment payments should be limited to a case-by-case determination. A determination on this basis will protect the rights of those taxpayers who are truly in need. Making this provision mandatory would create an undue burden on the IRS and would allow certain taxpayers to take advantage of the system.

10. LIMITATION ON CLASS AUDITS

The bills would place limits on the IRS with regard to investigations dealing with a particular trade or business or profession. It would require that the IRS meet certain requirements which we believe are extremely burdensome and would severely limit the IRS's ability to audit certain industries. We are not aware of situations where the IRS has abused the rights of taxpayers when it has performed class audits. Typically, the information that has been obtained from class audits has been used appropriately to determine which taxpayers should be audited and which should not. We oppose this part of the provision.

One of the proposed requirements is to allow the audit group to contest the IRS' claim singly or through a group spokesperson. This part, relating to contesting IRS claims, has merit in that it can severely reduce costs in defending the action, and we support it.

The final provision regarding the prohibition on the imposition of interest and penalties in certain amended return situations is not consistent with related areas in the law, and we therefore, disagree with this part of the provision.

11. BURDEN OF PROOF IN ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

We oppose this provision. Under the proposal, the burden of proof on all issues would fall on the IRS rather than the taxpayer. If this provision is adopted, the entire audit system that presently exists would have to be changed.

Adopting this provision would prove to be an extreme burden on the system as well as unduly limiting the entire process. The IRS would have to develop new in-depth audit procedures and would likely cause many taxpayers to be subject to unnecessary examinations. To transfer the burden from the taxpayer to the IRS would create impractical limitations on the ability of the IRS to discharge its audit responsibilities in a fair and efficient manner.

12. WRITTEN ADVICE OF IRS EMPLOYEES

We express no opinion on this section.

13. TAXPAYER ASSISTANCE ORDERS

We express no opinion on this section.

14. ADMINISTRATIVE APPEAL OF LIENS

We express no opinion on this section.

15. MINIMUM SALES PRICE

The implementation of this provision would prove to be costly, time consuming and unadministerable. The determination of "fair market value" of property is always contentious, and this definitional problem has been highlighted with regard to many other sections of the Internal Revenue Code. The proposal would unduly protract the collection process, and we, therefore, oppose this provision.

16. APPLICATION OF THE REGULATORY FLEXIBILITY ACT TO THE IRS

The impact on the IRS must be considered. If Congress continues to pass major tax legislation every year or so without regard to the impact on small business, while at the same time requiring Treasury to issue implementing regulations, an additional requirement that the IRS analyze regulations for impact on small business may be unreasonably burdensome. If Congress is to require the IRS to consider

the impact on small business when writing regulations, then the Congress should: (1) consider the impact of the legislation on small business and (2) consider the impact on all business of the huge backlog of regulations that Treasury has not yet written.

We oppose the enactment of this provision.

17. CIVIL ACTION FOR THE DEPRIVATION OF RIGHTS BY IRS EMPLOYEES

We express no opinion on this section.

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Herbert J. Lerner
Division of Federal Taxation

June 1, 1987

The Honorable Lawrence B. Gibbs
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N. W.
Washington, D. C. 20224

Dear Commissioner Gibbs:

We appreciated the opportunity for AICPA Tax Division representatives to meet with Frederic Williams and members of his staff on May 4, 1987 to discuss the proposed Internal Revenue Manual guidelines concerning the interviewing of represented taxpayers. As you know, the Internal Revenue Service's efforts in this area continue to be of great concern to members of the AICPA.

Since our representatives attending the May 4th meeting were denied a copy of the proposals for use after the meeting, our review of the guidelines was constrained to notes made by those in attendance. Our tentative conclusions on the proposed guidelines are as follows:

- The AICPA is opposed to the interview of represented individual taxpayers in field or office examinations as the initial step in the process.

- If certain information is deemed necessary by the IRS examining agent(s), the taxpayer's representative should be given an opportunity to supply the information. If the information is not forthcoming, the existing Internal Revenue Manual guidelines for bypassing a representative should be followed.

- When an interview of a represented taxpayer is deemed necessary and appropriate, the taxpayer and the authorized representative(s) should be informed in advance as to the specific subjects the IRS agent wishes to discuss.

- The new proposals are perceived to authorize a "fishing expedition" by the IRS examining agent to explore the possibility of unreported income or other indications of potential fraud by the taxpayer. If this perception is even close to reality, the CPA representative would have to consider the need for additional legal representation with competence in the area of criminal fraud. (And our organization may find it necessary to so advise its members.)

APPENDIX A

- o The proposed guidelines will result in a negative impact on the long standing three-party relationship between practitioners, the IRS, and taxpayers--a relationship that has contributed successfully to our self-assessment system.

The AICPA understands the importance of examination procedures that contribute to increased quality and efficiency in the examination of taxpayers by the Internal Revenue Service. We have long supported that objective. We would be pleased to work with the Service to help further improve the process of efficient tax examinations.

Based on the data we have seen and the discussions to date, we continue to question the desirability of the proposed manual guidelines, and therefore oppose their issuance at this time. Further, we believe that you should consider a temporary suspension of the interview procedure for represented taxpayers until this issue is clearly resolved.

We would welcome the opportunity to discuss our views and conclusions with you at any time. Please contact me (at 862-6258) or Joe DeCaminada, Chairman of our Tax Administration Subcommittee (at 313/446-7216) if we can be of help in the further development of the IRS position on this matter.

Very truly yours,

Herbert J. Lerner
Chairman
AICPA Tax Division

HJL:bh

Copies to T. P. Coleman, Acting Assoc. Com'r. (Operations)
F. P. Williams, Asst. Commissioner (Examinations)
J. E. DeCaminada, Chairman, AICPA Tax Adm. Subcom.

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July 20, 1987

Ms. Laura Wilcox
Hearing Administrator
U. S. Senate
Committee on Finance
Room SD-205
Dirksen Senate Office Building
Washington, DC 20510

**RE: Taxpayer Bill of Rights (S. 579 and S. 604)**

Dear Ms. Wilcox:

I am writing this letter with the intention that it be included in the record of the hearings on the Taxpayer Bill of Rights legislation (S. 579 and S. 604). Even though written on Wyatt stationery, this letter represents only the views and comments of myself, Joseph Beres.

I strongly support the provisions of S. 579 and S. 604 because I (and others) am currently the "target" of an overzealous IRS Agent, Charles E. Fuller of the Springfield, Illinois District Office. As will be demonstrated below, Mr. Fuller apparently believes that, by selectively auditing the pension plans for which I am the Enrolled Actuary, he can raise a significant amount of revenue for the IRS.

Presently, I am employed as a Senior Consultant by The Wyatt Company, a major employee benefits consulting firm in Chicago. I have been an Enrolled Actuary since 1976, and I am also a Member of the American Academy of Actuaries, a Member of the American Society of Pension Actuaries and a Member of the International Actuarial Association. In my 17 years of working in the actuarial field, I have had to deal with many IRS agents (over 25), but I have never experienced the "harassment" exhibited by Mr. Fuller.

The majority of the problems I have encountered with Mr. Fuller arose during 1986. As a result of several "unrelated" IRS private letter rulings issued in 1985 concerning the "reasonableness" of actuarial assumptions, Mr. Fuller has used the conclusions in those letter rulings as the basis for auditing many of the pension plans for which I am the Enrolled Actuary. (Special Note: The actuarial assumptions used in my valuations were very similar (if not identical) to the set of assumptions used by most other Enrolled Actuaries during the years in question. This fact was demonstrated by review of IRS/DOL pension plan statistics for those years. Thus, if my assumptions were the professional "norm" for those years, why hasn't all other actuaries (over 2000) also had their valuations of pension plans audited and

challenged?) In performing these audits, Mr. Fuller made gross mathematical (arithmetic) errors in arriving at what he considered to be the allowable tax deduction for contributions to these pension plans -- which caused me and my associates to spend an inordinate amount of time (and expense) reconciling his incorrect calculations. Furthermore, he has repeatedly requested copies of documents that either are on file at the IRS or which contain identical information that is on file at the IRS.

It appears that Mr. Fuller has convinced of few of his superiors that much revenue will be realized as a result of these audits. Accordingly, other IRS staff people have been assigned to those "target" plans for which I am the Enrolled Actuary. These IRS staff people (2 or 3 only) have personally contacted the corporate sponsors of those audited plans and have made statements that: (1) many of the Schedule B's (the required schedule of actuarial information that must be filed each year with a plan's annual IRS return) that I have signed are "wrong", and (2) that any Schedule B which I have signed is being selected for "audit". Not only do these statements constitute improper and unethical conduct on the part of IRS agents, but they have also potentially damaged my reputation as an actuary/consultant.

In January of 1987, the IRS's Internal Investigation Branch was contacted to investigate Mr. Fuller's conduct and that of those IRS agents working under his direction. An IRS Special Representative met with me and my associates and, based on this meeting, filed a report stating whether she would recommend that a formal investigation should be conducted. Subsequent to my meeting with the IRS representative, I was never informed as to whether there would be an investigation. In fact, when I made a follow-up call to the IRS representative in March of 1987, she told me that the recommendations she had made were confidential information and that she could not tell me whether an investigation would be conducted.

In summary, I support any legislation which will curb the type of conduct by IRS agents that I have experienced within the last 1-1/2 years. I believe that the provision in the Taxpayer Bill of Rights legislation which prevents IRS personnel from being evaluated on the amounts collected by the IRS as a result of their audit work will discourage IRS agents from selectively harassing individuals such as myself in order to achieve personal gain. In addition, the provision in S. 579 which permits IRS agents be sued if they deprive any person of his rights under the Constitution or other Federal Laws will act as a deterrent to those agents who believe they have a "duty" to act in the same manner as Mr. Fuller has acted.

Sincerely,

Joseph Beres
M.A.A.A., M.S.P.A., M.I.A.A., E.A.
Senior Consultant
Manager - Peoria and Champaign Offices

JB:gel

THE Wyatt COMPANY